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THE GENERAL STATUTES OF MASSACHUSETTS.

THERE is lying before us a well-bound, handsomely executed volume of 1,126 pages, purporting to be "The General Statutes of the Commonwealth of Massachusetts," 1860. By its side are the "Report of the Commissioners on the Revision of the Statutes," 1858, a volume of some thousand or more pages, and a volume of "Amendments of the Commissioners' report on the Revision of the Statutes; including the legislation of 1859," containing another 356 pages.

As presenting the entire statutes and fundamental law of a body politic of more than a million of people, engaged in all the varied pursuits of agriculture, commerce, and the arts, in a single volume, and exhibiting the care and caution with which these have been framed, the works before us are deeply interesting and highly suggestive. They serve as a people's laws always must, as a reflection of the character, the habits, and the opinions of the men who dictated them, and to mark the stage to which, as a people, the community for whom they were framed, have attained in the progress of moral and political science.

Without stopping to pursue this thought, or seeking to cherish a feeling of local pride, by dwelling upon the many wise provisions which may be found in the volume before us; our chief object will be to call the attention of our readers to the wise and beneficent policy which our govern-

ment has always shown, in endeavoring to make its laws known and accessible to every class of its citizens and the measures by which this purpose has been pursued. It will, however, be found to have been accomplished rather by the way of revising and condensing statutes already made, than in giving shape to their original enactment. Neither the constitution nor the law itself has provided any officer or body of men whose duty it is to prepare original forms of laws, or to compare their bearing or effect with those already existing, or critically to examine the language in which they are expressed, or the consistency or symmetry of their parts. All this seems to be left to be corrected, after having stood upon the statute book for a longer or shorter period, till their crudities and inconsistencies shall have been rectified by acts of amendment or repeal, or moulded into harmony by judicial construction.

Happily, however, there have hitherto been modes devised in the manner already hinted, by which the permanent laws of the Commonwealth have, from time to time, been subjected to efficient ordeals by which the mischiefs and crudities of popular and, often, hasty legislation have been corrected, and the spirit of the concluding clause of the Bill of Rights carried out, which separates the legislative, judicial, and executive departments of the government, "to the end it may be a government of *laws*, and not of men."

This has been done by taking measures to render the statutes of the Commonwealth accessible as well as intelligible. To do this must have been a leading thought in the minds of the framers of our constitution, while they were laying down the broad principles upon which our government was to rest. They had, indeed, enough of the light of history to remind them that the worst form of tyranny might consist in applying the forms of law to punish the violation of statutes or decrees, of whose existence, until broken, the offender had no means of knowledge.

The emperor, who published his edicts by exposing them upon pillars too high to admit of their being read, has been held in execration by every succeeding age as a cheat as well as a cruel tyrant. In the words of Gibbon, "the vain titles of the victories of Justinian are crumbled in the dust, but the name of the *Legislator* is inscribed on a fair and everlasting monument." And Napoleon, we are told, with the glorious memories of Marengo and Austerlitz and Jena

still fresh, declared, at St. Helena, that he considered the code which bears his name, the noblest monument which he had reared to his fame.

In a State where, like ours, the common law prevails, government can do nothing better in respect to that department of its jurisprudence than to provide wise and faithful expounders of its principles. But in exercising its legislative powers, it has an obvious duty itself to do, in promulgating as well as framing such statutory enactments as the exigencies of the State demand.

In both these respects, Massachusetts has ever aimed to do her full duty. Her courts have been her pride. And the repeated attempts at revision and elucidation of her necessarily rapidly multiplying statutes have shown the solicitude, on the part of her government, to give the citizen the most ample opportunity to understand his duties as well as his rights.

The necessity of resorting to some such measure as condensation and revision, in order to render the statute law of the State accessible to all, must be obvious to any one who reflects that it is now more than two centuries and a quarter since the prolific brains of the freemen of Massachusetts have been busily at work in building up, changing, modelling, and reforming a system of enactments designed to regulate the minutest detail of municipal duties, as well as to advance the broadest interests of the whole body politic; and that every year has supplied a new set of schemers and theorizers to take part in this multifarious work.

The system of legislation thus built up, has been partly the work of a colony with free democratic institutions, partly that of a province, with royal checks and balances, but chiefly of a constitutional commonwealth, where legislation can be, for no considerable length of time, other than the prevailing sentiment and feeling of the collective body of the people.

And yet, in order to show the necessity of some corrective power in a plainer light, it should be borne in mind that not a few of these statutes originate in the want or convenience of some one or a few individuals in the community,—some private grief to be relieved, or some personal wrong, real or supposed, righted. And thus the State, often unwittingly, finds herself with a general law based upon an individual experience, which, however ill assorted, her courts

endeavor, as best they may, to fit into the fabric of her public jurisprudence.

The statute of 1838, in relation to divorces, was passed to meet the case of an unfortunate yeoman in Franklin County, whose better half chose to leave him to cook his own breakfast and darn his own stockings. The legislature of 1851, from some private grief, probably, were seized with a new-born sympathy and zeal for poor debtors and married women, and went to work to secure to the latter, the privileges of a homestead free from the rapacity of any creditor who might be so reckless of the laws of human justice, as to ask for the payment of any honest debt. To carry out this idea, four successive acts were passed, by one of which all husbands were practically, perhaps not unwisely, put under the guardianship of their wives as to conveying their own estates, till out of these successive acts of legislation, and one or more solemn adjudications of our courts, a system has been elaborated which the people, at last, regard as both wise and intelligible.

We have referred to these instances as mere hints illustrative of how legislation originates, and a system of law grows up, to ask what must have been the condition of the people as to knowing what their laws were, if our statute books had continued to contain the mass of legislative acts since 1629, or even since our constitution went into force in 1780? Or, if a man's rights or duties could only be ascertained by selecting, collating, and arranging such of these as still remained in force and unrepealed.

Now it is to the modes by which an evil so intolerable as that which we have supposed, has been obviated, from time to time, that these remarks are chiefly intended. It is to show how existing statutes have been brought into juxtaposition in a compendious form, the general laws separated from those only of special application, and such as have been repealed or become obsolete omitted altogether from our statute book, and the mind of the common reader thereby relieved from much of its embarrassment.

The constitution formed a new epoch in our legislation, and our present system of statutes, as a connected series, only goes back to that event. But many of the colonial and provincial laws had such an important bearing upon the rights and titles to property vested under them, upon the spirit and effect of statutes since enacted, and in throwing

light upon the history of the times, that the legislature of 1812 wisely and patriotically provided for collecting and publishing them.

The commission to whom this duty was confided, were Nathan Dane, William Prescott, and Joseph Story, and higher and fitter names could not have been found. The result was a volume of 830 closely printed pages. The charter and general laws of the Plymouth Colony were collated, arranged, and published under the direction of the legislature, by William Brigham, a well-known member of the Suffolk bar, in 1836, in a volume of 336 pages. And these form an invaluable contribution to the legal and general history of Massachusetts, second only in importance to the Massachusetts and Plymouth Records, since published at large by order of the legislature.

These were, however, as before remarked, properly outside of the statutes of the Commonwealth, enacted since the constitution. The latter had been multiplying till they filled some eight or nine volumes, through which one had to wade, almost without a guide, in order to hunt up the simplest law.

The separation of Maine seemed to form a fitting epoch from which to take a new start, as it were, in the matter of our statute and fundamental law. And, in addition to remodelling our constitution, measures were adopted for effecting a complete *compilation* of the then existing statutes. The plan consisted of giving a list of public and private acts in their chronological order, retaining all that had not been repealed, and embodying, in smaller type, such provisions of those which had been repealed as had a bearing upon existing rights, and the omission of all others.

The plan, then, was an admirable one, and when it is remembered that it was confided for its execution to Asahel Stearns and Lemuel Shaw, it is hardly necessary to add that it was most successfully accomplished. Whoever is old enough to recall the appearance of the two volumes of about 600 pages each, into which they had condensed their materials, cannot but remember with what satisfaction they were welcomed by all the profession as well as the public at large. By means of marginal and foot notes and references, it was a work of comparative ease to trace a statute through its various changes, and, what could hardly be done

before, to arrive at something like a satisfactory result. But still it was a compilation, and before another step had been taken, the evil of multiplied legislation had again grown to be a formidable one.

The time had come when these statutes must, if possible, be collated, condensed, and arranged into a better system and a more compact form. Under a resolve of February, 1832, Charles Jackson, Asahel Stearns, and John H. Ashmun were commissioned to accomplish this most difficult but most desirable measure. Mr. Ashmun died before its completion, and John Pickering was appointed in his place.

The men who were to accomplish the work were a guaranty of its success, and, accordingly, on the thirty-first of December, 1834, they made a report to the Executive of the result of their labors, embracing and embodying the substance of the existing statutes in a single volume.

This report was submitted to the legislature of 1835, and by them was committed for revision to a large committee of their own body, who reported 170 pages of amendments to the same. The whole was then revised by the legislature, at a special session, and finally passed as a single act under the name of the "Revised Statutes," &c. on the fourth of November, 1835, to take effect on the first of April following. The work consisted of 146 chapters, and covered, when printed, 801 pages. But with all the precautions, already mentioned, in endeavoring to make the work complete, it became necessary, the next year, to pass an amendatory act of eight pages, to supply and correct what had escaped the attention of the revisers.

The work thus produced was committed to Theron Metcalf and Horace Mann for publication, and to their diligence and fidelity the public owed the accuracy with which it was printed, the numerous and invaluable marginal references it contained, and its copious and exact index. And the people were, at last, put into possession of a revised code of statute law in a cheap form, conveniently arranged, and, to a reasonable extent, simple and intelligible in the phraseology and meaning of its provisions. The entire volume contained 1007 pages, including 173 of index.

But the possession of such a treasure did not check the spirit of legislation and love of change which was, in the end, to deprive it of much of its value except as a starting-point in a new hunt for some statute which was to be

sought amongst the tangled growth of a teeming soil. Some may remember "the member" from M., in 1838, who, the moment he was qualified to act, and before he had taken his seat, proposed an order for repealing or amending some half score of the provisions of the Revised Statutes, giving notice at the same time that he had some thirty more to offer.

As a consequence of this prolific legislation, it became necessary to publish a volume called "Supplements to the Revised Statutes," in 1853, consisting of 1049 pages of text, and 67 pages of index, exclusive, it should be remarked, of what are called "Special Laws." Prefixed to this volume is a table of the chapters and sections of the Revised Statutes, which had been, in the mean time, repealed, modified, or added to by the act of amendment, and the statutes in this volume. As stated by the Commissioners in 1854, "More than twelve hundred public statutes had been passed since 1835, when the Revised Statutes were adopted. More than 1,600 enactments contained in the Revised Statutes, had been either expressly, or by necessary implication, repealed or modified since their adoption, and not more than *ten* or *twelve* of the one hundred and forty-six chapters remained unchanged by subsequent legislation!"

The consequence of all this was that in less than twenty years the legislature felt themselves again called upon to devise some measure to relieve the people of this overburden of legislation. In 1854, under a resolution to that effect, a commission consisting of John M. Williams, Jonathan E. Field, and David Aikin, was created to report a plan for consolidating and arranging the general statutes of the Commonwealth. They executed this duty in a most satisfactory manner, and inaugurated a measure which was carried into effect the following year by instituting a new commission to consolidate and arrange those statutes in a manner indicated in the resolve authorizing their appointment. Joel Parker, William A. Richardson, and Andrew A. Richmond were selected to fill this commission. But, by reason of the ill health of Mr. Richmond, the labor of it devolved upon the two former gentlemen.

The task was, certainly, a herculean one, and one from which men of less resolute will might readily have shrunk. There were some two thousand pages of matter, made up of the old revision, changed and modified in the manner

above mentioned, and a multitude of acts new and amended, scattered over twenty-four years, covering all imaginable subjects, drawn by different hands, with different phraseologies, some clear and some discordant, all of which were to be brought together, reduced into a reasonable compass, made to conform to the construction given to them, from time to time, by the courts, and all framed into one system, which should be homogeneous in all its parts and provisions. It should be stated, moreover, that more than 500 public acts, passed after the report of the commissioners of 1854, were also to be incorporated into the body of the work, which the commissioners of 1855 were to execute.

Without now saying anything of the manner in which their work was performed, it may be stated, that their final report was made on the 15th December, 1858, three years and nine months from the date of their appointment, showing a good degree of diligence compared with the time which occurred between the adoption of the resolve for the new compilation of the statutes in 1822, and the report of the commissioners upon the same, which was about eleven months, although not a section of a statute had to be redrafted or collated with others. The time that intervened between the passage of the resolve for the first revising of the statutes in 1832, and the completion of the commissioners' work, was about two years and ten months. But it was obviously a work in either case in which the only way of making haste was to do so slowly. The manner was of infinitely more consequence than the time in which it should be done.

Very much the same course was adopted in respect to the report of this commission as to that in 1835. It was referred to a large committee to sit in the recess, the result of whose labors, including the acts of 1859 and *the constitution in a new draft*, forms a volume of 356 pages. In this they state that "the whole number of amendments herewith reported is 3,264, in addition to the chapters reported in new drafts. Of this number of amendments, 366 were rendered necessary by the legislation of 1859. Of the remainder, by far the larger part are changes of language alone."

Of the almost entire pages of the latter, it is unnecessary to speak, since at best it is, in most cases, substituting forms of expression for those heretofore uniformly applied in the

language of our statutes, and is rather a matter for the grammatical taste of a schoolmaster or a legislator, than the function of a commissioner acting under a delegated power like that of the revisers of 1855.

Our space does not admit of anything like a detail of the history of these reports, and the final action thereon. It is enough to say that we have the result before us in the volume of "General Statutes," whose title stands at the head of this article.

For the beautiful style of its execution, the completeness of the work, its marginal references, not already furnished by the commissioners in their report, and especially for its singularly full and complete index of two hundred and eight pages, without which much of the value of the work would be lost, the public are indebted to the taste and diligence and skill of Mr. Richardson, one of the commissioners, and George P. Sanger, associated with him in the execution of the work. Besides these, they have added a glossary of technical terms and phrases made use of in the body of the work, which will be found of great convenience to the general reader. And when it is remembered that they have been obliged to acccomplish all this, including the correction of the press, in something less than five months, in order to have the volume ready for use by the time when these statutes were to go into effect, the promptness and completeness of the work are deserving of high commendation.

We have occupied far more space than we intended, and yet have scarcely spoken of the merits of this great and important work. It is, of course, out of the question, to say anything, in such a notice, of its contents in detail. To have fused and harmonized so many different elements, to have reduced such a conglomerate to less than half its original size, and yet retain its substance, its spirit and its effect, and to say that it has been done without any marked error, omission, or defect, is great praise. To say that it has been well done is eulogy high enough to satisfy the ambition of any reasonable man. We think we should be doing less than justice to Messrs. Parker and Richardson and their assistants, if we did not, in general terms, accord to them, what few have been disposed to deny, unquestioned ability, unwearied diligence, and undoubted success. Of minor details and personal differences that may have arisen

in the progress of the work, we have neither time nor taste to speak. The legislature, in the work they have produced, have given another pledge to the people that in the form of government under which we live there is yet safety, harmony, and strength.

But we cannot close this notice without a single word as to the men who, from time to time, have taken a prominent part in thus giving form and symmetry to our system of statute law. Their labors form a part of our history. Their names and their memories should be preserved as those of public benefactors. When Justinian and Napoleon undertook to frame the codes that bear their names, they called to their aid the ablest lawyers in the empire. The names of Dane and Prescott and Story, of Stearns and Jackson, and Ashmun and Pickering, recall the memories of profound jurists, wise counsellors, and learned and upright men. The last associate of that noble class of men survives to dignify and adorn the highest place in our judiciary, by his personal worth and his unsurpassed juridical powers.

Mann, though he left the profession, of which he was a distinguished member, while engaged in the publication of the Revised Statutes of 1835, proved himself still more eminent in other departments of honorable ambition and pursuit. And his associate in that responsible and laborious duty, has since been called to administer the law in its broader scope, upon the highest tribunal in the State.

Of the Commissioners of 1854 and 1855, it cannot be necessary to speak. Chief Justice Williams had already achieved an enviable reputation as a jurist and an upright judge. Judge Aiken, for the brief term he was upon the bench, amply vindicated his fitness for the place. Mr. Field had been less known as a jurist than as a public man, while holding a prominent place in our Senate. Of the senior and junior members of the latter commision, the former had been too long before the public as the able chief justice of a neighboring State, and since then by his connection with the Law School of a neighboring university, and the latter has been too well known in his connection with a high and responsible judicial office in one of the largest counties in the Commonwealth, to need, on this occasion, a word of explanation or commendation. Their great work is now before the public, to win for them, if it prove successful, the thanks of the community, for which they have so diligently labored.

District Court of the United States. District of Massachusetts. In Admiralty, June, 1860.

THE YACHT WANDERER, G. B. LAMAR, CLAIMANT.

Under the second section of the Act of 1818, chap. 91, for the suppression of the slave-trade, it is not necessary, in order to subject the vessel to forfeiture, that the fitment should be complete.

Nor is it necessary that it should be peculiarly adapted to the slave-trade, if the illegal intent be otherwise shown.

But if the intent is to be inferred only from the character of the fitment, the latter must be such as to prove the illegal design.

Where any person as master fits out a vessel with intent to employ her in the slave-trade, she is liable to forfeiture, although the owner has never authorized any such illegal enterprise, and is ignorant of the master's intention.

This was a libel of information, by the district attorney in behalf of the United States, claiming a forfeiture under the second section of the act of 20th April, 1818, chap. 91. That section is as follows: —

"That no citizen or citizens of the United States, or any other person or persons, shall, after the passing of this act, as aforesaid, for himself, themselves, or any other person or persons whatsoever, either as master, factor, or owner, build, fit, equip, load, or otherwise prepare any ship or vessel in any port or place within the jurisdiction of the United States, nor cause any such ship or vessel to sail from any port or place whatsoever within the jurisdiction of the same, for the purpose of procuring any negro, mulatto, or person of color, from any foreign kingdom, place, or country, to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of as slaves or to be held to service or labor; and if any ship or vessel shall be so built, fitted out, equipped, laden, or otherwise prepared, for the purpose aforesaid, every such ship or vessel, her tackle, apparel, furniture, and lading shall be forfeited."

J. A. Andrew and *A. G. Browne, Jr.* for the claimants, made the following points:

1. That the 2d section of the act of 1818 was not violated so as to involve the forfeiture of the schooner, unless she was fitted or prepared for sea by Martin, "*as master*," acting in the work of fitment and preparation as the agent of the owner, and that, as essential to his action, thus "as master," he must have been authorized by the owner to fit and prepare the vessel for sea.

2. That there is no evidence or pretence that he was authorized by the owner to fit or prepare her for sea at all, much less to fit or prepare her for the slave-trade.

3. That the evidence shows that if Martin exercised any of the authority pertaining to a master at all, he did so by mere usurpation; and that his partial fitment and preparation for sea was surreptitious, tortious, and fraudulent as to the owner.

4. That such acts as were performed by Martin, and are relied upon by the government as evidence, that he was master of the schooner, (although they are usually performed by that officer, and are competent in evidence,) do not necessarily *prove* the fact; and that notwithstanding these acts and the circumstances attending them, the truth being, and being made to appear, that Martin was a wrongdoer, they, as pieces of evidence, are to be regarded as successfully rebutted. In other words, that a man who is not master, does not become so by pretending that he is master, and acting the falsehood as well as speaking it.

5. That even although Martin had become "master" *de facto*, so as to bind the owner in respect to his ordinary contracts with seamen and material men, (they acting innocently and *bona fide*,) yet he could not forfeit the ship from the owner unless he should be master *de jure*, — master as between the owner and himself; — for otherwise he cannot be deemed, in the words of the statute, to have been "acting for" the owner in what he did. In other words, that one "as master" cannot forfeit a vessel unless as "acting for the owner;" and that Martin was in no sense acting for Lamar, but was acting against him.

6. That there was no such characteristic fitment or preparation for sea as to show that a slave-voyage was intended.

7. That the declarations made by Martin as to *his own* unlawful intention cannot affect the vessel, because only the owner, or a real and lawful master or factor could so impress his own mind and intent upon the vessel as to affect its character to the detriment of the owner.

8. That the only fitment or preparation for sea which was made at all, was the hasty, secret, and imperfect preparation which Martin made to enable him to *steal* the vessel; and that such a fitment, made by a felon in fraud both of the owner and of the government to enable him to steal the vessel is not the fitment intended by the statute, nor are the

words or acts of such a felon, said or done in the pursuance of his felonious intention, capable of affecting either the owner or the *res*.

9. That even if Martin could affect the vessel by his own intention, there was no clear intention in his mind beyond the appropriation of the vessel to his own use; that he had no money, nor credit, nor other means of obtaining a slave cargo; that he had no accommodations for a cargo of slaves, nor such an outfit as is characteristic of a slaver; that he was merely a general pirate, intending to get what he could, and actually getting what he could by artifice and intimidation and fraud, from vessels which he boarded and from merchants, at ports where he stopped, and pursuing an aimless career over the seas subject to such variation as his own caprice or the accidents of fortune might suggest.

And they cited *The Emily and The Caroline*, 9 Wheat. 381; *The Plattsburgh*, 10 Wheat. 133; *United States* v. *Gooding*, 12 Wheat. 460.

C. L. Woodbury, District Attorney, for the United States, cited *United States* v. *Gooding*, 12 Wheat. 460; *St. Jago de Cuba*, 9 Wheat. 409; *The Porpoise*, 2 Curtis, C. C. 307; *The Catharine*, 2 Paine, 721; *United States* v. *Morris*, 14 Peters, 464; *United States* v. *Quincy*, 6 Peters, 445.

SPRAGUE, J.—This controversy resolves itself into two questions.

1. Was this vessel fitted out or prepared with intent to employ her in the slave-trade? and if so,

2. Was this done by any person "as master, factor, or owner?"

On the night of the 18th of October last, The Wanderer went to sea from the port of Savannah under the command of one Martin, with a full crew of officers and men, all shipped for that purpose at Savannah. Some of the crew had been on board of her, fitting her for sea, for several days before she sailed, during which time water had been taken in, stores purchased and put on board to the amount of nearly $2,000. Her sails were taken from the shore and bent, and other preparations made. These acts were all done by Martin, as *master*, and constituted a fitting or preparing of this vessel for sea.

Was it done with intent that she should be employed in the slave-trade? The conduct of Martin, and the manner in which this vessel went to sea, demonstrate that he was

intent upon some unlawful enterprise. Most of the stores were hurriedly taken on board in the evening of the 18th of October, and during the darkness of the same night he hoisted sail and went down the river, taking with him two seamen who had just before come alongside in a boat, which had been employed by one Black to convey him to the vessel; and these two men were compelled, against their will, to go the voyage. The vessel escaped from the port without any clearance from the Custom-House, without charts or books of navigation, and so suddenly that none of the crew were allowed time to take their clothing from the shore, and many of them were coerced by threats and a display of deadly weapons.

Upon what illegal enterprise was Martin intent? Here it has been made a question, whether his own declarations of his purpose are admissible in evidence. As the fitment was all made by him and the vessel went to sea under his command, there can be no doubt that what was said at the time of doing these acts, as explanatory of, or giving them character, are admissible as part of the *res gestæ*.

To Hussey, the shipping-master, who was employed by him to engage the crew ostensibly for a voyage to Matanzas, he declared that "he had been in the slave-trade, and was going into it again." And before the vessel left the river, while near its mouth Martin prepared shipping articles,— describing the voyage to be to Saint Helen's Sound, a place on the coast of Africa,— which all the crew signed. This they were induced to do by a free use of intoxicating liquors, and a display of pistols. And, before leaving the river, Martin repeatedly declared that he was going for a cargo of *blackbirds*, that is, negroes. Upon getting to sea, instead of going to Matanzas, he shaped his course for the Western Islands, and arrived at Flores in thirteen days, with no deviations, except for the purpose of speaking other vessels, in order to obtain charts and supplies. At Flores he took on board a quantity of provisions, and then escaped furtively, without paying for them, and soon after arrived off Puncha, in the Island of Madeira; but seeing a man-of-war in port he put to sea, directing his course for the coast of Africa. A few days after this, falling in with a French bark, he went on board of her with a boat's crew, and in his absence, the mate, with the concurrence of the crew, took the command, changed her course, brought her to Boston, and deliv-

ered her up to the officers of the revenue. These facts clearly show that The Wanderer was fitted for sea by Martin, with intent to employ her in the slave-trade.

In the cases cited by the counsel, it was held, that the fitment need not be complete, but that any preparations for the unlawful purpose are sufficient.

The Emily and The Caroline, 9 Wheat. 381; *The Plattsburgh*, 10 Wheat. 133; *United States* v. *Gooding*, 12 Wheat. 460.

But it is insisted that here the fitment was not only incomplete, but that no part of it was exclusively or peculiarly adapted to the slave-trade.

But such adaptation is not necessary, where the intent is otherwise proved. Where the character of the fitment is the only evidence of the illegal purpose, it must be such as to prove such purpose. And if the preparations be only such as are made for innocent voyages, no criminal intent can be inferred from it; but if the criminal intent be proved *aliunde*, then *any* fitting for sea, coupled with such intent, satisfies the language and spirit of the statute.

As to the second question.

Was this fitting out for the slave-trade made by Martin as master? When The Wanderer sailed, and for several months before, she was owned by Charles A. L. Lamar, of Savannah, who had purchased her under a decree of condemnation for having been a slaver. Eight or ten days before she went to sea, Martin, by consent of Lamar, took actual possession and control of her, and acting as master, shipped a crew, purchased stores upon the credit of the vessel, and otherwise prepared her for sea, with intent, on his part, to engage in the slave-trade.

But it is insisted, that this was not done by him as master, within the meaning of the statute, unless he was actually authorized so to fit the vessel for that trade; that if Lamar only intended and authorized a fitment by Martin, as master, for a lawful voyage, it would not be sufficient, and that there must be a criminal intent on the part of the owner.

To this doctrine I can by no means accede. The words of the statute are — "if any person . . . as master . . . . shall fit . . . or prepare a vessel with intent," &c. The acts and intention of Martin bring the case within the words of the statute, and they are clearly within the mischief which it was intended to suppress. If all the ille-

gal acts and purposes must be authorized by the owner, then they are his acts and intention by his authorized agent, and the words "*master* or *factor*" are without meaning, and might be wholly omitted without impairing the force or effect of the statute.

The construction contended for will not only violate the language, but defeat the purpose of the act. For an owner might send his vessel on a lawful voyage to New Orleans, for example, and there his master fit her out for the slave-trade, nay, even in the home port. The owner has only to keep behind the curtain while the master is fitting his vessel for the criminal enterprise, and make, at the proper time, such declarations and manifestations as may repel the presumption of complicity, and the vessel will be liable to no forfeiture. But it is urged, that it is unjust to deprive the owner of his property when he has been guilty of no criminal purpose. No doubt it may sometimes bear hard upon innocent owners. But this hardship is imposed by the general policy of our laws when vessels are employed for criminal purposes. For example, smuggling goods to the value of $400 may subject a ship to forfeiture, however innocent the owners. And seizures for such cause are frequent. Even the Cunard steamers have been arrested more than once in this port because a few hundred dollars' worth of goods had been smuggled on shore without a suspicion that the owners, or even the officers, were in any degree implicated in the illegal act.

The legislature, to insure not only good faith, but the utmost vigilance on the part of the owners, says to them emphatically, "you must, on peril of losing your vessel, see to it that she shall not be made use of as an instrument for violating the law." And if this is deemed necessary, merely for the protection of the revenue, for a much stronger reason should it be enforced against vessels to prevent their being used as instruments to carry on a trade, which not only in the eye of morality, but also in the eye of the law, is the most atrocious that man can be engaged in. We must recollect that a traffic so denounced and so criminal will assume every disguise, false pretence and deception, which fraud and ingenuity can devise, and calls for the most stringent measures for its prevention; one of which is to enlist the owner of the vessel to prevent her being so employed in violation of law, by holding him responsible for such use to the extent of his ownership.

For these reasons I do not think it necessary to go into the question which has been so much contested, whether Lamar had knowledge of Martin's criminal intent. It is said by the claimant that Martin had contracted to purchase three fourths of The Wanderer for the sum of $20,000, and that he was permitted to go into possession, and control her in the confident expectation that he would speedily become the major owner. But this explanation goes only to the guilt or innocence of Lamar, and leaves the fact of the actual control, and the acts and purposes of Martin as master untouched. In this case Martin was in possession with the consent of the owner, and I am not called upon to decide what would have been the result if he had been a mere trespasser from the beginning.

When that case shall arise, and an owner shall leave his vessel so exposed that a wrong-doer can seize, fit, and convert her to such unlawful purpose, it will be for the court to consider whether both the language and the spirit of the law do not require her condemnation. But that question is not now before me.

This vessel, her tackle, apparel, furniture, and lading must be decreed forfeit.*

Circuit Court of the United States, District of South Carolina. April Term, 1860.

THE UNITED STATES *v.* WILLIAM C. CORRIE.

The Circuit Court of the United States for the District of South Carolina will not surrender a person charged before it with a capital crime, that such person may be carried to another district, there to be tried for a minor offence.

The jurisdiction of offences under the act of 1820 ch 113, §§ 4, 5, is in the Federal Circuit Court for the district into which the offender is brought, or in which he is found.

* There were two other cases in the District Court connected with The Wanderer. One was a libel *in rem*, brought by Weston, the mate, and the crew, for their wages; the other was a libel *in rem* by the same parties for salvage; they having brought her into the port of Boston, as stated in the above opinion. The claim for wages was objected to, because, first, the crew knowingly and willingly sailed on the illegal voyage, and second, because the owner of The Wanderer did not give the master such authority as would give the seamen he employed a lien on the vessel for their wages. Both objections were overruled, and the claim for wages was allowed, except as to the mate, who was held not to have been ignorant of the purposes of the voyage. The libel for salvage was dismissed, because, to entertain it, the libellants should have saved the vessel from something. They could have saved her only from forfeiture for being engaged in the slave-trade; and, as the vessel was decreed forfeited, they had no reason to be compensated for any salvage service. W. H. Judson was counsel for libellants; Messrs. Andrew and Browne for the claimant.

No offence committed under the said act of 1820 can be within the limits of a State; the place or places appointed therein for such trials are applicable exclusively to offences committed without the limits of a State.

The said act of Congress of 1820, ch. 113, does not declare the slave-trade as a trade or business, piracy. Congress has the power to declare such trade piracy; but has not yet exercised that power.

The offences punishable as piracy under the 4th and 5th sections of the act of Congress of 1820, ch. 113, are the landing on a foreign shore by any one of the ship's company of the vessels named in said act, and the seizing there of any negro or mulatto, *not then in a state of servitude*, with intent to make him a slave; the decoying, or forcibly bringing or carrying, or the receiving such negro or mulatto on board any such ship or vessel, with such intent; the forcibly confining or detaining such negro or mulatto on board such ship or vessel, with such intent; the offering or attempting to sell, or anywhere on tide-water landing or delivering on shore from such ship or vessel, any such negro or mulatto, with such intent; but nowhere in the said act is the slave-trade, as a trade, made piracy.

The federal district attorneys have the exclusive direction and authority over the prosecutions committed by law to their charge, until the cases come under the control of the court; when the cases so become subject to judicial control, the district attorneys then act with the express assent or tacit acquiescence of the court.

How far the President of the United States may properly interfere in criminal prosecutions, *quære*. Such interference is exercised only to put an end to such prosecutions and discharge the accused. It has never been claimed, never exercised, never permitted for the purpose of changing the proceedings; still less for the purpose of changing the place of the trial of the accused.

The facts in this case appear in the opinion of Judge Magrath, which is given below in a condensed form, and in many instances with a change of phraseology. The full opinion is too long for publication entire. It can be found in the "Charleston Courier," daily, of April 19, and in the "Tri-weekly Courier" of the same date. It has been intended to omit nothing necessary for a full and correct understanding of the case. The 4th and 5th sections of the act of May 15, 1820, (act 1820, ch. 113, 3 Stat. at Large, p. 600,) are as follows.

SECT. 4. If any citizen of the United States, being of the crew or ship's company of any foreign ship or vessel engaged in the slave-trade, or any person whatever, being of the crew or ship's company of any ship or vessel, owned in the whole or part, or navigated for or in behalf of any citizen or citizens of the United States, shall land, from any such ship or vessel, and, on any foreign shore, seize any negro or mulatto, not held to service or labor by the laws of either of the States or territories of the United States, with intent to make such negro or mulatto a slave, or shall

decoy, or forcibly bring, or carry, or shall receive such negro or mulatto on board any such ship or vessel, with intent as aforesaid, such citizen or person shall be adjudged a pirate; and on conviction thereof before the Circuit Court of the United States for the district wherein he may be brought or found, shall suffer death.

SECT. 5. If any citizen of the United States, being of the crew or ship's company of any foreign ship or vessel engaged in the slave-trade, or any person whatever, being of the crew or ship's company of any ship or vessel, owned wholly or in part, or navigated for or in behalf of any citizen or citizens of the United States, shall forcibly confine or detain, or aid and abet in forcibly confining or detaining, on board such ship or vessel, any negro or mulatto, not held to service by the laws of either of the States or territories of the United States, with intent to make such negro or mulatto a slave, or shall, on board any such ship or vessel, offer or attempt to sell, as a slave, any negro or mulatto not held to service as aforesaid, or shall, on the high seas, or anywhere on tide-water, transfer or deliver over, to any other ship or vessel, any negro or mulatto, not held to service as aforesaid, with intent to make such negro or mulatto a slave, or shall land, or deliver on shore, from on board any such ship or vessel, any such negro or mulatto, with intent to make sale of, or having previously sold, such negro or mulatto as a slave, such citizen or person shall be adjudged a pirate; and on conviction thereof before the Circuit Court of the United States for the district wherein he shall be brought or found, shall suffer death.

MAGRATH, J.—The first proceeding in this court against William C. Corrie was upon the affidavit of Joseph Ganahl, federal district attorney for Georgia, which charged in substance that the defendant, as master of the vessel called The Wanderer, landed, in the southern district of Georgia, certain negroes, not held to service, &c., with intent to make them slaves, and that the said Corrie, on a foreign shore, did seize, decoy, and forcibly bring, carry, and receive on board the said vessel, such negroes, with intent, &c., contrary to the 4th and 5th sections of the abovenamed act of Congress. Upon this affidavit a warrant issued for the arrest of Corrie. At the same time an order was asked for his removal to Georgia, to be tried there for this offence. After consideration, the order was refused, because by the

express provision of the said act, jurisdiction of the offence was vested in the Circuit Courts of the State where the offender was "brought" or "found," and Corrie was found in South Carolina. It was also declared that the jurisdiction in this court was exclusive of the jurisdiction of such courts in any other State. Corrie was arrested on the warrant, and was admitted to bail for his appearance at the next term of the Federal Circuit Court for this State.

After these proceedings, and before the said term of this Circuit Court, the grand jury, in the Federal District Court for Georgia returned an indictment against Corrie for piracy under said act of Congress. An exemplification of it was laid before this court, and the motion was renewed for Corrie's removal to Georgia for trial. This court denied the motion, and ordered the amount of the recognizance of Corrie here to be doubled. During the term of the Circuit Court for this State, to which the defendant was recognized to appear, and before the grand jury had been charged in his case, the Federal Court in Georgia issued a bench warrant for the arrest of Corrie to answer for an alleged violation of the act of Congress of 1818, ch. 91; and an order for his removal to Georgia for trial was again asked for, and it was refused for several reasons; one of which was that it was without precedent to ask a court having before it a criminal, accused of a capital offence, and whose case the grand jury were waiting to consider, to send him to another tribunal for trial for a minor offence.

Afterwards at the same term Corrie's case was submitted to the grand jury in this circuit, after being charged by Mr. Justice Wayne. They retired with the witnesses and returned into court without having found a bill. The next day the foreman of the jury asked that the bill against Corrie should be again submitted to them; Judge Wayne thought it should not be; I differed in opinion, and adhere to the opinion I then expressed. The grand jury should have been impeached, or allowed to reconsider the case if they desired to do so: for I see no ground upon which they could be refused the exercise of their privilege unless they had rendered themselves unfit. The grand jury received the bill, retired, and came into court with an indictment against the defendant for a violation of the abovenamed act of 1820. Corrie was taken into custody by order of the court. At the end of the term he applied to be again

admitted to bail. Judge Wayne left the matter of bail with me. I admitted him to bail, with sureties for his appearance at court.

So far as it is known to this court the defendant has never been "brought" or "found" within the limits of the State of Georgia, but he was "found" in South Carolina. While subject to the jurisdiction of this court, the grand jury of the Federal Court in Georgia found an indictment against him for a violation of the act of 1820, for which he was here held to answer. In regard to these cases there is a direct conflict of jurisdiction; and the federal district attorney for this district now asks leave to enter a *nolle prosequi* in the proceedings here against Corrie. In the statement made to the court of the proceedings which are to succeed the entry of *nol. pros.*, it is understood that the purpose is now as it was when the order was asked for the removal of Corrie upon the bench warrant, viz: to remove him to the federal courts in Georgia under an alleged violation of the act of 1818, and then to try him for a violation of the act of 1820. I said then that I would not use the power with which I was vested to remove a criminal for any such purpose; and I have not since then changed my determination.

When, because of offences alleged to have been committed in violation of the act of 1820, jurisdiction is claimed by the Federal Circuit Court in Georgia of the offence before this court, and of the offender held to answer here, it cannot maintain its claim while this court has jurisdiction. If jurisdiction of the offence is claimed by that, because it is alleged that the offence was committed within the limits of the State of Georgia, the answer is,—no offence committed under the act of 1820 can be within the limits of a State. The place or places appointed for such trials are applicable exclusively to offences committed without the limit of a State. To construe the act as relating to offences within the limits of a State, is to disregard, in its designation of the place or places for trial, "a distinction which the legislature has taken, and must of course be respected by the court." The designation of a place or places for trial, applicable only to offences which could be committed outside of the limits of a State, is equivalent to the words, if used, "without the jurisdiction of any State." The creation by Congress, therefore, of an offence not cognizable in courts

having jurisdiction of offences committed outside of the limits of a State, but cognizable in courts having jurisdiction of offences committed within the limits of a State, is a matter in regard to which the legislature has been silent. "Congress has not made such punishable, and the court cannot enlarge the statute." It seems to me, therefore, that the circumstance relied on to support a claim for the exercise of jurisdiction in this case by the courts of the United States for the State of Georgia, which is, that the violation of the act of 1820 occurred within the limits of the State of Georgia, and, therefore, must be tried in the courts of that State, is the circumstance which conclusively repels the claim so made for jurisdiction; because an act committed within the limits of the State of Georgia, and cognizable therefore only in the courts of the United States for that State, is not an offence within the terms of the act of 1820, which relates exclusively to offences cognizable in courts exercising jurisdiction under the act of Congress over crimes and offences not committed within the jurisdiction of any State. Cognizance of this offence, therefore, by the courts of the United States for the State of Georgia, because alleged to have been committed within the limits of the State of Georgia, and therefore cognizable only in the courts of that State, is not consistent with the plain meaning or obvious intention of the act of 1820. It does not respect a distinction which Congress has taken; operates to enlarge a penal statute; makes punishable other offences than such as Congress has declared; and this no court can do, according to the judgment of the Supreme Court.

I will now proceed to show what are the crimes declared by the act of 15th May, 1820. This act has been in the statute book for nearly forty years; but as yet no court has been called on to give to it a construction which would show the true nature of the offences which it creates. Whatever hesitancy I might feel in undertaking now to give a construction to this act, it is, as it should be, altogether removed by the reflection, that it is proper, nay, imperative, as I conceive, upon those whose duty it is to expound the law, to declare what this act means. I consider it moreover necessary to do so, because there have been verdicts of acquittal rendered by juries in the case of persons charged with a violation of this act; and such verdicts

have been regarded as indicative of a purpose on the part of juries not to enforce its provisions. How far such an opinion has a just foundation, may be seen in the statement which I now make: that no case has been tried in the Court of the United States for the State of South Carolina, for alleged violation of the act of 15th May, 1820, in which any other verdict than that, which acquitted, could have been given consistently with the law and the evidence in such case. I will go farther and say, that had a verdict of guilty been rendered, in any of the cases which were tried in the courts of the United States for this State, I do not believe that any judge of the United States would have hesitated in directing a new trial.

I have always thought, and the most careful consideration has strengthened the conviction, that there exists a misapprehension of the act of Congress of the 15th May, 1820. It has been said, that by this act of Congress the slave-trade has been declared piracy. I cannot find in this act anything which sustains that construction; while in the act, and in other acts distinctly passed for the suppression of the slave-trade, every thing leads us to reject that conclusion. Offences similar to such as are prohibited by the act of Congress of 1820, were declared to be, and punished as offences by the British Parliament, when the slave-trade itself was legalized by that body. I intend to speak from the act itself. The authority to which I refer for the correctness of the opinion I am expressing, is in the words which Congress has used in this declaration of its purpose. It is the legislature, not the court, which is to define a crime and ordain its punishment; and the intention of that legislature is to be found in the words they employ.

The first thing which strikes us in the consideration of the act of 1820, is that it does not, in its title, nor in any part of the act, either by way of modification, amendment, or repeal, refer to the previously existing slave-trade laws, or to the slave-trade as the object for which its provisions were intended. In every other act passed for the suppression of the slave-trade the purpose is plainly declared in the title and in every section of such act. In the only portions of this act in which the slave-trade is mentioned, to the mention of it are added certain other things, which other things, when committed, constitute the offences

which the act prohibits. These offences, referring to them now only generally, consist of landing on a foreign shore, and there seizing or decoying a negro or mulatto, not held in service by the laws of either of the States or Territories of the United States, with intent to make him a slave. And this offence, commencing on a foreign coast, is followed out, in its several stages, as it affects that negro or mulatto, in forcibly bringing, carrying, or receiving him on board the vessel; there confining and detaining him, with intent to make him a slave; or transferring him to another vessel on the high seas or tide-water, or from on board landing or delivering him on shore, with intent to sell or having previously sold him as a slave.

From a very early period to 1819, various acts had been passed by the Congress of the United States in relation to the slave-trade, considering it as a trade. As a trade it had been prohibited under heavy penalties. But while prohibited as a trade, no act of Congress had made the seizure and decoying of negroes or mulattoes on a foreign coast, with intent to make them slaves, an offence to be tried and punished in its courts. That the slave-trade itself, and such acts of violence and spoliation are distinct, is seen, as already stated, in the fact, that in the 23 Geo. 3, ch. 31, by which the slave-trade was legalized, it is also provided, that no commander or master of any ship trading to Africa shall, by force or fraud, take on board or carry away from the coast of Africa, any native or negro of said country, or commit or suffer to be committed, any violence on the natives, to the prejudice of the trade. As far back then as 1750, force, fraud, or indirect practices, in obtaining possession of the negro, were held so distinct from the slave-trade that it was prohibited and punished as injurious to the trade; while the slave-trade itself was permitted and expressly legalized.

In 1819 Congress passed two acts now requiring our attention. One additional to such as were then of force in relation to the slave-trade, the purpose of which is distinctly set forth in its title and in all of its provisions, was for the suppression of the slave-trade. The other act was in regard to a purpose equally clear in its title and its provisions; it was to protect the commerce of the United States. In the progress of and towards the conclusion of the South American war, privateering had degenerated into

piracy, and the depredations committed had been so numerous and daring that it became necessary to legislate for the protection of the commerce of the United States; hence the act of 1819. But the duration of that act was fixed, and consequently, in 1820, if still necessary, it had to be re-enacted. In the House of Representatives it was amended by what are now the fourth and fifth sections of the act; and in this form it became a law. Such is a brief narrative of the circumstances connected with the legislation of Congress in the act of the 15th May, 1820. For its meaning we must refer to its language. And if it shall be said that because the act relates to the offence of seizing or decoying a negro or mulatto, or using such a negro or mulatto in any of the modes prohibited by the act, with the intent to make him or her a slave, that, therefore, it relates to the slave-trade; enough has already been said to show that such a proposition involves a confusion in the apprehension of degrees of crime, made very manifest in the act of 1820; the slave-trade laws of the United States up to the year 1819; the legislation of the British Parliament; and the obvious distinction between participation in a trade or traffic, business or commerce, declared unlawful and acts of force or fraud, spoliation or rapine, in regard to the subject-matter of that trade or traffic, business or commerce; which may very well be considered as robbery and piracy. But still more: when Congress, in the exercise of a power which it has, if it is pleased to exercise it, shall make the slave-trade a piracy, it must do so in terms which refer to it as a trade.

If we consider now the persons who by the act of 1820 are made liable upon conviction to the punishment it inflicts, we shall see, more clearly, how inconsistent it is with the idea of its connection with the slave-trade. No one can be punished under the act of 1820, unless he is of the crew or ship's company. Hence, no one on board, although the owner of the negroes or mulattoes, with which the vessel is laden, can be convicted or punished under its provisions. In all other acts of Congress passed for the suppression of the slave-trade, all persons are embraced, who by violating these laws, can be made liable for such offences in the Courts of the United States. It may very well be understood, that such acts were intended for the suppression of the slave-trade, when they were directed to all

persons upon whom the courts could impose punishment, in cases where they were convicted of its violation. But with what show of reason is it to be urged that an act is intended for the suppression of the slave-trade, as a trade or business, which imposes its penalties only on those persons who may be fairly presumed never able to engage in it as a trade or business. Nor can it be said that by the severe penalty visited by the act of 1820, upon the crew or ship's company, it was intended to destroy the agencies by which the slave-trade could be carried on, and in this manner extinguish the trade. For that construction has been given to the intent, by the act made an essential part of the offence, which relieves the crew of the penalty, unless in cases where they claim and exercise over the negroes or mulattoes the control of ownership. Without this evidence, they may be guilty of transporting, which is a misdemeanor, punished by fine and imprisonment; but they cannot be held guilty of piracy, and for it punished by death. If then all persons are exempted from the operation of the act of 1820, except the crew or ship's company; and if the crew or ship's company can never have been considered as the persons for whose benefit the slave-trade is carried on, or who are able to engage in it as a trade or business: does it not at once appear almost absurd to consider such an act as intended for the suppression of the slave-trade. It would suppress the trade by inculpating only those who never could be found guilty of its violation. But if we will inquire why it is, that the act of 1820 relates exclusively to the crew or ship's company, and to no one else, we shall understand the crimes which the act declares. It has been seen that if they are persons never engaged in the slave-trade as a trade or traffic, the act is meaningless. But if it is remembered that the crew or ship's company were the persons by whom the lawless acts were committed, which in number and daring had, in 1819, called for the protection to commerce which the most stringent penal legislation could impose; that their depredations had been committed in all places and against every flag; that they had braved the municipal laws of the United States; defrauded its revenues by the establishment of depots on its frontier, whence constant violations of its laws were committed; and among these violations was the unlawful introduction of negroes; it may then be seen, that

the crew or ship's company were the proper objects to which the penalties of the act were directed, because they were the only persons who would commit the offences which it prohibited. The offences so committed were not violations of the slave-trade laws, so far as these laws regard that trade as a trade, business, or employment; laws which were then severe, and have not for forty years required an addition to the penalties they then enforced; but those acts of seizing and decoying, of force and fraud, or indirect practices in obtaining possession of free negroes and mulattoes, and making them slaves; such acts as were, in fact, piracy; which if committed within the limits of the States having slaves, had been by many if not by all of those States, made felonies, and were, by the laws of those States as by those of the United States, punished with death.

A brief examination of the intent, a material element in the offence under the act of 1820, confirms this view. The intent which the act prohibits is to make a slave of such a negro or mulatto. It is peculiar to the act of 1820. What does it mean? It has been said it matters not, in the consideration of an offence under the act of 1820, what may have been on the foreign coast, the condition of the negro or mulatto, whether he was bond or free. But from such a proposition I dissent altogether. The intent prohibited is, to make a slave. To make implies the creation of that condition. Of one already a slave, it could never be said of him who continued his servitude, that he had made him a slave. The law may presume a condition of freedom until one of subjection is proved. But if the presumption of freedom, unless it was disproved, might support the charge, and be evidence in the charge of an intent to make that negro or mulatto a slave; so, upon the negation of that presumption, and proof of his servitude at the place from which he was taken, the charge of an intent to make him a slave would be disproved; in the same manner as it would be, in a case where the negro or mulatto was proved to be held in servitude by the laws of a State or territory of the United States. The same reason would in both cases lead to the same conclusion. Whether the negro or mulatto was held to servitude by the laws of either of the States or territories of the United States, by the laws of Brazil, of Cuba, or of Africa, of him it could not be said that there was proof of an intent to make him a slave, if he was already a slave.

The whole scope of the act of 1820 in regard to the fourth and fifth sections, is not perceived unless the third section of the same act is also considered. The third, fourth, and fifth sections embrace all the cases in which robbery may be committed, whether that robbery relates to the rights of property or the rights of persons. As in the third section, whatever may be the subject of property, if stolen, is declared piracy, for which, upon conviction, the offender shall suffer death; so in the fourth and fifth sections, the right of personal freedom is protected, and he who violates it by force or fraud, in whatever stage of the transaction he is detected, is a pirate, and upon conviction shall suffer death. Such crimes are piracies, because robberies; and robberies, because by force, fraud, or indirect practices, they deprive the negro or mulatto of his right to freedom.

If the several offences, as set out in the fourth and fifth sections, relate only to a negro or mulatto not held in servitude by the laws of either of the States or territories of the United States, and have no reference to the mode in which the possession of such a negro or mulatto was acquired, then the master of a vessel, who purchases a negro or mulatto in Brazil or Cuba, and lands him upon the shore of the United States, or upon another part of the coast of Brazil or Cuba, with intent to sell him again, is a pirate. If it could be necessary to show that this was not the piracy which the act contemplated, it is but necessary to bear in mind that if a passenger shall land, with intent to sell, one hundred negroes or mulattoes purchased by him in Cuba, he is subject to fine and imprisonment. But if the captain of the vessel purchases but one, and lands him with the same intent, he would be considered a pirate, and must suffer death. The piracy would then consist not in the wrong done to the negro or mulatto, nor in the landing and selling him, but in the fact that, in the latter case, it was done by the master or one of the crew of the vessel. Surely, the statement of such a consequence would be of itself sufficient to show that the construction which leads to it must be alike irrational and illegal.

The landing or delivering on shore, which is made piracy under the act of 1820, must be of a negro or mulatto, not held to service by the laws of either of the States or territories of the United States, with intent to sell, or having sold

him as a slave; and the ship or vessel from on board of which he is so landed or delivered on shore, is that ship or vessel in which he has been kept forcibly confined and detained, with intent to make him a slave; and this intent to make him a slave is the intent to deprive him of his right of personal liberty, to rob him of his freedom; and such intent can only be affirmed of an antecedent right to freedom. This forcibly confining and detaining on board of such ship or vessel, such negro or mulatto, with such intent, is, although an independent act in itself, yet a stage or condition of the crime, which commenced with the seizure or decoy of the negro or mulatto, on a foreign coast. Landing or delivering on shore, in the fifth section, is connected with antecedent circumstances in the fifth section, all of which are essential in establishing the crimes enumerated in it, and all of which repel the idea that Congress, in the creation of these crimes, intended or considered that this, or any other of them, was to be regarded as a crime committed within the limits of a State; therefore to be tried in the Courts of the United States for that State; and therefore inconsistent with and repugnant to the plain meaning and manifest intention of Congress, in its declaration of the place or places where jurisdiction should be exercised in cases under this act.

I come now to the consideration of the motion made to enter a *nol. pros.* in the proceedings against William C. Corrie. The prosecution of offenders is, by the act of Congress of 1789, made the special duty of the district attorney. His control over and direction of cases thus committed to his charge is exclusive, until they come under the control of the court. Practically, however, the discretion of the district attorney is exercised in relation to the case and its discontinuance, until the trial has commenced, as freely as before. This difference is, however, always recognized, that, after the case has become subject to judicial control, the district attorney acts with the express assent or tacit acquiescence of the court.

Although not so declared by any law, it has been regarded as proper that the President of the United States should, upon considerations of public policy, at least in such public prosecutions as affect the domestic tranquillity or foreign relations of the United States, interfere in criminal cases, and cause their abandonment. But this

right is exercised only to put an end to such prosecutions, and to discharge the accused; never to change the proceedings or the place of trial.

It will be seen with what pertinency I am led to the consideration of the relations of these officers, when in the argument it is said that the district attorney may enter a *nol. pros.* without leave of the court, but that his discretion is controlled by the President. I speak of the President, because I suppose that the directions, said to have been given by the attorney general, have the sanction of the President.

It is true that the court has no power to command the prosecuting officer to proceed in a criminal case if he is unwilling so to do. It is equally true that where the court permits an entry of *nol. pros.* it adopts and justifies that proceeding. If the court cannot refuse its leave to the entry of *nol. pros.*, it cannot refuse its assent, or withhold its justification, to the prosecuting officer, however desirous or even bound it may be to do so. To answer all the purposes for which a *nol. pros.* is intended, it should be entered upon the records of the court; it cannot be so entered without the assent of the judge; this, therefore, would seem to lead to no other conclusion than that a motion to enter it must be addressed to the discretion of the court.

In this case, I refuse assent to an entry of it. It is not made in the exercise of that discretion of the district attorney which is necessary, if not indispensable, with me, as the evidence of its propriety. It is not made for the purpose either of abandoning a prosecution for any of the various causes which suggest that course, but to prepare the way for other proceedings, which, in their operation, overrule and set aside a judgment of the court. Such a proceeding, operating for such purposes, has nothing to recommend it to me, nor can it have place on the records of this court.

NOTES OF RECENT AMERICAN DECISIONS.

Supreme Judicial Court for the Commonwealth of Massachusetts. Entries from Essex County.

ISAAC SMITH *v.* HENRY LEE, JR.

Right of way by necessity — Way by necessity not always shifting.

This was an action of tort for obstructing a way. There was evidence tending to show that the defendant, in 1845,

purchased of one Boyden a certain lot of land on the Beverly shore, which may be designated as lot A. The oral condition of the purchase provided that a way over the lot, which was used by certain owners of land, (among whom was the plaintiff,) beyond that purchased by the defendant, should be removed to the rear of the lot A, and accordingly, the way was laid out and run through other land of Boyden, so as not to touch the said lot. The plaintiff did not object to this change of the way, but used it until 1856. In 1855, the defendant purchased from Boyden another adjoining lot of land, which may be called B; Boyden assuring him that the right of way might be changed again. In May, 1856, the defendant purchased of J. M. Grosvenor and others a lot of land adjoining these two lots, designated as C, and then laid out a way through his own land, and up to another lot (not his own, but then the land of Boyden, and now the land of Elliott, which is lot D), at a point lower down, but which, if continued through Elliott's lot, would enter the plaintiff's estate at the same point it did before, and the defendant built up the wall where the way had previously entered the lot B.

There was evidence tending to show that, in consequence of this obstruction to his way, the plaintiff used the latter way, by consent of the defendant, from the summer of 1856 until June, 1857, when this suit was brought. In April, 1857, Thomas Elliott purchased of Boyden the lot D, and objected to the plaintiff's passing through the same in the direction of the new way as laid out by the defendant.

The plaintiff claimed title to the way by prescription only, and offered evidence to prove that for over forty years past he and his grantor had always had and used a way over the defendant's land, and always, up to 1856, in the same track at the place obstructed by the defendant, and, up to 1845, always in the line marked out on the plan exhibited at the trial, as the most circuitous route and nearest to the shore; and that, in 1845, a change was made by mutual agreement of the parties interested, by which a piece of new way was opened, constructed, and adopted by the plaintiff, and. in consideration of the same, a part of the old way, for which the new piece was a substitute, was abandoned, — the part of the way obstructed by the defendant being the same as before, and common to both the substituted and the abandoned way.

The defendant did not deny that the plaintiff had a right of way over his land, but claimed that he had no right of way by prescription, and that it was a way by necessity, and a shifting way, and could be changed by the defendant, so that he might compel the plaintiff to go in any other convenient or reasonable way over his land, entering at the same spot and coming out upon the same spot on the plaintiff's land; and then offered evidence to prove that the plaintiff, since the commencement of the suit, had broken down the defendant's wall, and passed over his land, making the shortest cut, without regard to any way, as showing what the plaintiff consented to be the custom and nature of his easement. But the court held it inadmissible.

The defendant then prayed the court to instruct the jury, —

I. That, if the plaintiff claimed a prescribed way, the burden of proof was on him to show an adverse and uninterrupted use and enjoyment of it for twenty years, and that, during that twenty years, no disability of the holder of the defendant's land had existed to prevent the effect of such use to establish the said right.

II. The plaintiff's case, showing that, if any old way existed, it was abandoned for the use of the new way made in 1845, is not of itself proof that the way obstructed was substituted for the old way, but may be deemed evidence that the way was one by necessity, and a shifting way, at the pleasure of the owners of the servient estate, provided said owner be furnished with a reasonable and available way over his land.

III. The defendant and his grantor owning all the land when the way was shifted, the defendant could shift it with his grantor's consent, if not a way by prescription, and, Elliott purchasing after the way was so laid out, and after it had been used by the plaintiff, could not object to such use of the way as laid out.

Upon the first point requested by the defendant, the court ruled precisely according to the request, and also that, as the plaintiff claimed his way only by prescription, he must show himself entitled to it in that mode, or he could not recover in this action.

Upon the second point, the plaintiff having admitted that the old way between the points where it diverged from the new way had been abandoned only by the substitution of

the new way of 1845 for it, the court ruled, as in *Pope* v. *Devereux*, 5 Gray, 409, that the owners of the dominant and servient tenements might, by an executed oral agreement between themselves, discontinue an old way, and substitute a different one, and the right of the owner of the dominant tenement would be the same in the new way as in the old one, if such was the agreement and understanding of the parties at the time of the substitution, and the jury would determine to what extent that had, in point of fact, taken place here; but as to the point that this was a way by necessity, and a shifting way, the whole matter, upon the entire evidence introduced, was left to the jury by the court.

In reference to the defendant's claim that this was a way by necessity, and thence a shifting way, the court instructed the jury as to the origin and nature of ways by necessity, and ruled that if the line or track of the way by necessity had once been selected and adopted by both the owner of the dominant and the owner of the servient tenement, and had been defined, graded, conformed to by both parties, and travelled in uniformity by the owner of the dominant tenement, for a long space of time, it could not afterwards be changed at the pleasure of one of the parties, and that a way by necessity is not always a shifting way, but after it is open, adopted, and located, the parties are bound by it.

As to the third point of request, the court admitted it to be true so far as it was sustained by, and applicable to, any facts in the case.

A verdict was found for the plaintiff.

Rescript and brief statement of the grounds of the decision by

MERRICK, J. — Exceptions overruled, because a ruling rejecting the evidence offered by the defendant, and the instructions given to the jury, were correct.

Exceptions overruled; judgment on the verdict.

Ives and Peabody, for the plaintiff.

Saltonstall, for the defendant.

OBADIAH KIMBALL *v.* WILLIAM H. COMSTOCK AND DENNIS EAMES.

False pretences — Civil liability for representations as to general credit, &c.

This was an action of tort for damages alleged to have

been sustained by the plaintiff, by reason of the unlawful conspiring together of the defendants to defraud him. The declaration alleged that Eames was a boot manufacturer in Milford; that Comstock was a copartner of one Gove in the same business in Boston; that an agreement was entered into between Eames and Comstock & Gove, by which Eames should manufacture exclusively for them, they furnishing him with all the leather necessary for his business; that Eames soon became largely indebted to the firm, and was totally unable to pay; that both being desirous of an adjustment of the debt, and Comstock having purchased the interest of his partner, the two conspired that Eames should buy stock on credit, and under the recommendation of Comstock, and transfer the product to Comstock in payment of the debt; that the plaintiff was by this means induced to give credit to Eames, which otherwise he would not have done. The evidence failed to show any conspiracy, but the counsel for the plaintiff prayed the court to instruct the jury that, even though there was no fraudulent agreement between Comstock and Eames, yet if Comstock fraudulently made false representations concerning the ability of Eames, for the purpose of getting payment of Eames's debt to him by means of property obtained through such fraud, and actually, by those means and by means of the property thus obtained, accomplished such fraudulent purpose, then he was responsible for any injury sustained by the plaintiff through such fraudulent representations, even though Eames himself might not be responsible. But the court declined so to instruct the jury.

A verdict was rendered for the defendant.

Rescript and brief statement of the grounds of the decision by

Merrick, J. — No confederacy or conspiracy, as alleged in the declaration, between the defendants, Comstock and Eames, being shown, the court are of opinion that, by reason of the provisions of the Statutes, (Gen. Stat. ch. 161, § 54,) this action cannot be maintained against Comstock alone, on account or by reason of any representations made by him to the plaintiff concerning the character, general credit, or ability of Eames, which were not in writing and signed by him or some person duly authorized thereto.

Judgment on the verdict.

Abbott, for the plaintiff.

Train & Underwood, and Kent, for the defendants.

ANDREW J. PERKINS *v.* SAMUEL M. BOARDMAN ET AL.

Lien on personal property lost — Mortgage let in.

This was an action of replevin for the recovery of a mare. The plaintiff claimed the mare under a mortgage from Putnam, executed and recorded May 29, 1856. It was admitted that the mortgage was duly executed, and was sufficient to entitle the plaintiff to recover, unless the defendants could show a better title; that Putnam was the owner of the mare; that the defendants were livery stable keepers, and took the mare to board the greater part of the month of February, A. D. 1856; that, at the time of the service of the replevin writ, there was a balance due from Putnam to the defendants for the board of the mare, which board was regularly charged to Putnam by the stable keepers.

The defendants claimed that by law they had a lien on the mare for the board due; but, for the purposes of the trial, the presiding judge ruled that no such lien existed. The defendants then testified that, when the first month's board was due, they called upon Putnam for payment, but he, being unable to pay, said "The mare is good for her board. You may hold on to her, and when she eats herself up you can keep her, sell her, or do as you please with her." The owner also said that he should only want to use her to deliver and receive of his customers clothes for his laundry. They also testified that the mare remained in their stable up to the time of the replevin suit, and that Putnam used her in his business when he pleased.

The court instructed the jury that, if they were satisfied, from the evidence in the case, there was an agreement between Putnam, the owner of the mare, and the defendants, that the defendants were to keep and hold on to the mare until her board was paid, and if, when she had eaten herself up, they might keep her or sell her as they pleased, and the mare was to remain in the possession of the defendants, Putnam having the liberty to use her for himself about his business, as she had been used before; and the mare remained in the possession of the defendants, except that she was used as above mentioned, and she was so held and claimed by them at the time the mortgage was made to the plaintiff, and so held down to five or six days of the time of the replevin suit, when the defendants

refused to let the mare go out of the stable; then the defendants had a right to hold her until her board was paid; and the plaintiff could not hold her under his mortgage until he paid or tendered to the defendants the amount of their bill for board; and, if such contract was made, it must have been made before the 29th of May, the day when the mortgage was executed and recorded.

A verdict was rendered for the defendants.

Rescript and brief statement of the grounds of the decision by

MERRICK, J. — The lien of the defendants was lost upon the permission given by them to the owner to take and use the mare, and by his thereupon taking and using her in his ordinary business; and, the mortgage to the plaintiff having been duly executed and recorded after the defendants' lien was so lost, his title under the mortgage was therefore paramount.

Exceptions sustained, and a new trial ordered.

Saunders and Chase, for the plaintiff.

Parsons and Ives & Peabody, for the defendants.

LEVI BRIGHAM *v.* DANIEL POTTER ET AL.

Replevin — Void consideration of mortgage note.

This was a review, in the Court of Common Pleas, of an action of replevin. The property sought to be replevied was claimed by Brigham under a mortgage from the defendants. The defendants contended that the consideration of the mortgage was void, being a debt from one Wiley, a defendant in the former suit, to the plaintiff for the price of wines and spirituous liquors sold by the plaintiff to Wiley without a license; and also that the mortgage was in fraud of creditors, — Wiley being insolvent at the time, and Brigham having knowledge of this fact.

It appeared that the plaintiff had no license to sell spirituous liquors, and the only fact he relied upon as ground for replevying the mortgaged property was that the messenger had taken possession of it under proceedings in insolvency on petition of the mortgagor. The court ruled that the plaintiff could not maintain his action.

Rescript and brief statement of the grounds of the decision by

METCALF, J. — Part of the consideration of the notes,

which the mortgage of the replevied property was given to secure, was the price of spirituous liquors. The notes were therefore wholly void, and the mortgage therefore invalid.

Exceptions overruled; judgment for a return of the replevied property to the defendants.

Hutchins & Wheeler, for the plaintiff.

Robinson and Stickney, for the defendant.

JOHN H. NICHOLS, GUARDIAN, *v.* CITY OF SALEM.

Lapse of time as affecting an order of a city council.

This was a bill in equity to stay the execution of certain municipal orders. An agreed statement of facts showed the following: Elizabeth Gardner was the owner in fee of certain premises in Salem, and the complainant was her guardian. In August, 1851, the mayor and aldermen of the city adopted an order in relation to the widening of Washington street, upon which street the complainant's premises were situated. The widening of the street would necessitate the removal and destruction of several of the buildings on the said premises. From that time until October, 1858, nothing more was done by the board with reference to carrying out this order. At this latter date, notice of the intended change was served upon the complainant. But he contended in this bill that, *first*, so long a time had elapsed since the order was passed that it was now invalid; *second*, that the value and condition of the land had so changed that what was a fair appraisal and assessment of her damages in 1851, would not be so now; *third*, that by lapse of time the owner, Mrs. Gardner, could not now recover the damages assessed in 1851; and *fourth*, that one Chase, the owner of adjoining property on the same street, had not been notified.

Rescript and brief statement of the grounds of the decision by

METCALF, J. — The delay of the defendants was no bar to their proceeding at this time.

Bill dismissed without costs and without prejudice.

Ives & Peabody, for the complainant.

Endicott, for the respondents.

JAMES M. CURRIER *v.* REBECCA B. HOWARD.

Specific performance — Assignee of an agreement may enforce it in equity.

This was a bill in equity to enforce the specific performance

of a contract. The evidence showed that John H. Currier was the owner of a certain lot of land in Lawrence, and that Eli B. Howard was the owner of an adjoining lot; that John H. Currier, Eli B. Howard, and the defendant agreed to hold these two lots in common, and thereupon the following agreement in writing was given to John H. Currier.

"This certifies that J. H. Currier and Eli B. Howard have agreed to put the fronts of their lots in common, extending 100 feet from the street, and we consent to the sale of 2,000 feet of Currier's land to J. R. Gates, and acknowledge the receipt of one half the proceeds of said land; and we agree to give Currier a division deed whenever he desires the same.

"(Signed) ELI B. HOWARD,
REBECCA B. HOWARD."

In conformity with this contract John H. Currier conveyed a portion of his land to Gates, and divided the consideration with Howard and the defendant. Subsequently he conveyed one undivided moiety of the remainder of both lots to James M. Currier, the plaintiff in this suit, with the knowledge and consent of Eli B. Howard and the defendant. An agreement was then entered into between Eli B. Howard and the plaintiff, by which the plaintiff was to erect a double house upon the premises, one half to belong to Howard and one half to himself. It was shown conclusively that he did so, at large expense, but that Howard refused to give a deed to the plaintiff, as the agreement with John H. Currier provided, and conveyed his share to one Abbott, who conveyed it to the defendant. The defendant contended that the written contract proved was made with John H. Currier, and not with the plaintiff, and that there was no written instrument between the parties to the suit.

The case was taken from the jury and reserved for the consideration of the whole court, Bigelow, J. presiding.

Rescript and brief statement of the grounds of the decision by

BIGELOW, J. — The defendant is bound by the written contract to convey the premises named in the declaration according to the terms in the written agreement set forth; and the plaintiff, as assignee of said agreement from John H. Currier, has a right to enforce it in equity.

Plaintiff entitled to a decree for the specific performance of the written contract set out in the declaration.

Saunders, for the plaintiff.

Wrights, Perry, and Endicott, for the defendant.

Richmondville Union Seminary *v.* Hamilton Mutual Insurance Co.

Insurance — Representations in answers in the application — Amount recoverable.

This was an action on a policy of insurance. The plaintiffs made their application for insurance, and a policy was issued in the sum of $3,000. The seminary was a large structure valued at $24,000. The year following, and while the policy was open, the building was entirely destroyed by fire.

The defendants contended that in the answers to interrogatories as to what buildings were within 150 feet of the seminary, put to them upon their application, the plaintiffs failed to disclose a certain carpenter's shop, situated 50 feet from the seminary, which, though temporary, as the plaintiffs maintained, and to be immediately removed and therefore not necessary to be described in the application, in point of fact was never removed; that inasmuch as the existence of said building had not been disclosed in the application, the policy was void, and that it was immaterial, under the application and policy, whether it affected the risk or not.

Dewey, J. instructed the jury that if there was upon the premises of the plaintiffs, and within 50 feet of the building insured, a carpenter's shop or other building of the size of 46 feet by 18, as the evidence tended to show the present was, which structure, from the materials usually deposited therein, and the use to which it was devoted, was such a building as would thereby have required a larger premium to be paid for insuring the building, if its existence was not disclosed to the defendants in the answers found in the application, the policy would thereby be rendered void.

The court gave no further instructions on this point. Attached to a diagram presented in the application was a letter written to the defendants by their agent, which the plaintiffs claimed the right to put into the case. The defendants objected, but the court admitted the letter, instructing the jury that it was to be taken as a letter containing

representations by the plaintiffs only, and not as proof of the facts therein stated.

The plaintiffs in their application stated that they had $9,000 insured on the property in companies named, and $8,000 wanted in other companies, and the policy insured them in the sum of $3,000 additional. It appeared in evidence that, at the time of the fire, the plaintiffs had $14,000 insured on the property including the defendants' policy, and the defendants claimed that, under the 18th article of the by-laws attached to the policy, in case of damage or loss of property, on which such double insurance subsists, the company shall be liable to pay only such proportion thereof as the sum insured bears to the whole amount insured thereon; and that their liability upon the contract in said policy was to be calculated precisely as if the plaintiffs had obtained the other insurance of $9,000 and $8,000, to which this policy was to be additional, and that they were to pay three twentieths of the amount insured, said amount not to exceed two thirds of the actual value of the property. But the court ruled that the defendants' liability was to be calculated by the amount actually insured by the plaintiffs upon their property, and that as the value of the property was more than $21,000, and as $14,000 or less than two thirds of the value of the property was insured, the defenddants were liable, if at all, to pay the whole amount of their policy, with interest from the time it became payable.

The verdict was taken for the plaintiffs.

Rescript and brief statement of the grounds of the decision by

Bigelow, J. — The instructions given to the jury on the questions raised by proof of the erection of buildings within fifty feet of the premises covered by the policy, and which was not disclosed to the defendants, were correct. The letter written to the defendants by their agent was rightly admitted in evidence, for the limited purpose for which it was allowed. The instructions as to the amount which the plaintiffs were entitled to recover on the policy, were correct. The defendants were liable for their proportion, to be calculated by the amount actually insured by the plaintiffs on the property.

Exceptions overruled; judgment for the plaintiffs.

Osgood, for the plaintiffs.

Perry and Endicott, for the defendants.

THE ESSEX CO *v.* ADOLPHUS DURANT.

Writ of entry — When the tenant, as against the demandant who derives a perfect legal title from the tenant, may not question intermediate conveyances on the ground of fraud.

This was a writ of entry brought in the Supreme Judicial Court by the demandants to recover six acres of land in the city of Lawrence, then in the possession of the tenant. The tenant pleaded *nul disseisin.*

To maintain their action the demandants introduced in evidence five deeds which conveyed the land respectively as follows: Adolphus Durant to Sargent; Sargent to Barker; Barker to Saunders et al.; Saunders et al. to Rand and Storrow; Rand and Storrow to the Essex Co., the demandants. The demandants also claimed the premises under a title derived from Jacob How, the assignee of Durant as an insolvent debtor, and introduced in evidence the deed of assignment of the master in chancery to How, as assignee; How to Foster, Foster to Farley, and Farley to the demandants. They also introduced the record of a suit in equity brought by Durant against the Essex Co. et al. in which there was a decree dismissing the bill as against the respondents. The demandants claimed that their title to the demanded premises was in issue in this suit in equity, as well as How's title as assignee, and their title as *bona fide* purchasers of Barker's title through Saunders et al. and Rand and Storrow, without notice of any claim of Durant to the premises.

The tenant contended, and offered to prove, that, previous to Barker's conveyance to Saunders et al., Barker had made an agreement with Durant, by which he, Barker, agreed to hold the premises in trust for Durant; that Durant was to find a purchaser; and also that Barker agreed to certain stipulations concerning payment; that when Saunders et al. applied to Barker to purchase the premises, he informed them of the agreement, and directed them to negotiate with Durant as the party in interest; that they did so, and made a conditional bargain with him to purchase the estate for a certain consideration, and also to take a deed of the legal title from Barker; but that no absolute conveyance should be taken from Barker unless one was taken from Durant also; that, disregarding the agreement, Saunders et al. did obtain an absolute deed from Barker of the legal

title, and then refused to complete the condition with Durant; and that Rand and Storrow and the Essex Co. had full notice of these facts when they took their conveyances. The tenant also contended that How, the assignee, was not properly appointed, and that the proceedings thereupon were irregular.

The presiding judge, being of the opinion that the facts offered to be shown by the tenant, in the present suit, constituted no legal defence, and also that the objections made by him to the title derived by the demandants from said assignee, and the facts offered in defence to their title derived from Barker through Saunders et al., and Rand and Storrow, if available as an orignal defence, were not now open to the tenant, for the reason that the demandant's title to the demanded premises, under both said titles, was in issue, and was conclusively determined in said suit in equity, and could not now be questioned by the tenant, proposed to instruct the jury accordingly. It was thereupon agreed that the case should be reported to the full court, and if, in the opinion of the court, the objections raised by the tenant to the title derived from the assignee were not valid, or not open to the tenant, or if the facts offered to be proved in answer to Barker's title were not competent or available to the tenant, the tenant should be defaulted; otherwise the case should stand for trial.

Rescript and brief statement of the grounds of the decision by

Hoar, J. — The legal title in the demanded premises by deed derived from the tenant, being shown to be perfect in the demandants, the tenant has no such interest in the estate as entitles him to question any of the intermediate conveyances on the ground of fraud.

The tenant defaulted, and judgment for the demandants.

Hazen, for the demandants.

Stearns, Ives, and Peabody, for the tenant.

Bristol County.

Commonwealth *v.* Susan Murray.

Evidence — The proof of use of profane language is competent in the trial of a complaint against the defendant for being an idle and disorderly person.

This was a complaint against the defendant for being an idle and disorderly person. The government called several police officers, and in connection with other questions, as to

the misconduct of the defendant, not excepted to, put to them the question, "Did you hear the defendant use any profane language?" This question was objected to as incompetent, but the court thought it was competent, and admitted the question to be put.

Rescript and brief statement of the grounds of the decision, by

BIGELOW, J.—The language used by the defendant, to the proof of which exceptions were taken, was competent under the issue.

Exceptions overruled: case remitted to Superior Court for judgment.

The Attorney General, for the Commonwealth.

E. L. Barney, for the defendant.

RECENT ENGLISH CASES.

Court of Common Pleas.

KEENE *v.* BEARD.

Bankers' checks — Chose in action — Liability of indorser.

Where a check on a banker was drawn payable to A, or bearer, and afterwards indorsed by A, — *Held*, that the holder could recover in an action against A.

The declaration stated that one T. S. Bodenham, on the 10th March, 1859, made his draft or order in writing for the payment of money, commonly called a check on a banker, and directed the same to certain persons trading as bankers, by the name and style of the Union Bank of London, and thereby required them to pay to the defendant or bearer the sum of £11; and then delivered the said draft or order to the defendant, who then indorsed and delivered the same to the plaintiff, who then became, and was, and still is, the lawful bearer thereof; and the said draft or order was duly presented for payment, and was dishonored, of which the said defendant had due notice, but did not pay the same; and the plaintiff claims £15.

Demurrer, and joinder in demurrer.

J. Grant, in support of the demurrer. — A check is a chose in action, and therefore not assignable at common

law, and the plaintiff as assignee of an implied contract cannot sue upon it. None but a party to a contract can sue upon it, and the only exception to this is in the case of bills of exchange; the law of bills of exchange was adopted from the law merchant, but at first it only applied to foreign bills, but by 9 and 10 Will. 3, c. 17, the same rules were made applicable to inland bills also; 2 Bla. Com. 467; *Taswell* v. *Lewis*, 8 Ld. Raymond, Rep. 744; *Bromwich* v. *Lloyd*, 2 Lutw. 1585; *Buller* v. *Crips*, 6 Mod. 29; *Welsh* v. *Craig*, 8 Mod. 373. Bills of exchange payable to bearer for some time were held not to be within the custom of merchants; *Gibson* v. *Minet*, 1 Hy. Bla. 621: *Grant* v. *Vaughan*, 3 Burr. 1517. This is the case of a holder of a check payable to bearer, suing the indorser; as to the distinction between bills of exchange and checks, *Ramchurn Mullick* v. *Lachemeechund Radakissen*, 9 Mood. P. C. 46. He also cited *Laws* v. *Rand*, 3 C. B. N. S. 44; *Walmsley* v. *Child*, 1 Ves. sen. 344; *Bishop* v. *Young*, 2 Bos. & P. 83; *Rothschild* v. *Corney*, 9 B. & C. 391; *Brooks* v. *Mitchell*, 9 M. & W. 18; *Dixon* v. *Bovill*, 3 M'Ewen, Ho. of Lds. 1; *Gorgier* v. *Mieville*, 3 B. & C. 45; *Lewin* v. *Edwards*, 9 M. & W. 720; *Mills* v. *Oddy*, 3 Dowl. 722; *Moore* v. *Barthup*, 2 Dowl. & R. 28.

G. Denman, contra, cited Story on Promissory Notes, c. 11, ss. 487, 489, 492, 497, 498.

May 1. Erle, C. J. — I am of opinion that the declaration is good. This is an action brought by the holder of a check, on a banker, against the payee and indorser. The declaration is demurred to, and the principal point made in support of the demurrer was, that a check was not to be called a bill of exchange, so as to be capable of being sued upon, and creating a liability in the indorser to the person who may be the holder of the document. But bills of exchange and checks are in many respects analogous. All the incidents appertaining to a bill of exchange, such as passing by delivery and being the same as cash to a party taking it *bona fide* and for value, appertain to a check. A check, therefore, having several of the incidents of a bill of exchange, can it pass by indorsement? that is to say, when the indorsement is made not merely by fixing the name on the back of it, but by fixing it *animo endorsandi*, with the intention of passing a title to the check, and to incur the liabilities of an indorser of a ne-

gotiable instrument. In this case it seems that the indorsement was made for that purpose, and, therefore, our judgment in favor of the plaintiff will be in accordance with the intention of the parties to the check. But I also think that our judgment as to the principle of law is correct that a check is a negotiable instrument.

Byles, J. — I am of the same opinion. It appears to me that a check is in the nature of an inland bill of exchange, and is similar to it in many respects; one of the distinctions between them is, that a check is in the nature of an appropriation of money in the banker's hands for the purpose of discharging a liability of the drawer to a third person; but it is not necessary that there should be money of the drawer in the hands of the drawee of a bill of exchange; another difference is as to staleness, — delay in presenting a check to the banker does not prejudice the drawer, unless the banker has become insolvent in the mean time. Mr. Grant was wrong in supposing that the negotiability of inland bills depended on the statute 9 and 10 Will. 3, c. 17, for they had been negotiated many years previous. The notes and bonds of foreign states are negotiable instruments in this country, and persons taking them for value are entitled to make them available; that appears to be so clear according to the decisions, that I think it could not be held that checks are not in as favorable a position; I think that a check is within the class of an ordinary bill of exchange; and if it is so, why should it not be indorsed? In Story on Promissory Notes, s. 132, it is laid down, that although a note payable to bearer is transferable by mere delivery, it may also be transferred by indorsement of the payee, or of any other subsequent holder. A man's name being written on the back of an instrument without the intention of indorsing it and making himself liable does not, it is true, make him liable; for though it may be said that he has put his name on the back of the check, it is a writing on the back, but not an indorsement in the legal sense of the term; so in the case of a bank-note, a party who writes his name on the back of it is not liable on it, if he wrote without intending to indorse it. To make the indorser liable, the indorsement must be made *animo endorsandi*. Mr. Grant's argument would, I think, have had more authority a hundred years ago than he can expect it to have in these times.

KEATING, J. — I am of opinion that this check is negotiable, and that the plaintiff can sue upon it; and therefore our judgment ought to be for him.

Judgment for plaintiff.

Court of Exchequer.

EYRE ET AL. *v.* WALLER.

Check—Bills of Exchange, Act 1855.

The holder of a check is entitled to a summary remedy under the Summary Procedure on Bills of Exchange, Act 1855, 18 and 19 Vict., c. 67.

This was an application to set aside a writ issued under the Summary Procedure on Bills of Exchange, Act 1855, to recover the value of a check.

The indorsement on the back of the writ was as follows:—

"The plaintiffs claim £124 19*s.*, as payees of a check or bill of exchange, of which the following is a copy:—

"'London and County Bank, Hitchin Branch,

"'Hitchin, 7th March, 1860.

"'Pay Messrs. Eyre & Co., one hundred and twenty-four pounds 19*s.*

"'£124 19*s.* 0*d.*'"

A rule having been obtained on the ground that a check was not within the act,

Crompton Hutton showed cause. He contended that a check was the same thing as a bill of exchange payable at sight, and was comprised in the words of the act, "all actions on bills of exchange or promissory notes;" and referred to *Rochford* v. *Daniel*, 1 Fos. and Fin. 602.

Tompson Chitty, in support of the rule, contended, that, as in other statutes the word "checks" was inserted in addition to "bills of exchange," the same thing would have been done here if the legislature had intended the act to apply to checks.

POLLOCK, C. B.—It would be exceedingly dangerous for us to adopt the construction of the act contended for by Mr. Chitty. According to a lawyer's notions a check is the same thing as a bill of exchange. The holder of a check is just as much entitled to a summary remedy under the act as the holder of a bill of exchange.

BRAMWELL, B. — I am of the same opinion. If the natural construction is placed upon the words of the act, they will apply to a check.

WILDE, B., concurred.

Rule discharged.

Exchequer Chamber.

SULLEY v. THE ATTORNEY GENERAL.

Income tax—Trade—Foreign residence—Exportation of goods for sale abroad—Statutes 5 *and* 6 *Vict., c.* 35, *ss.* 100 *and* 106 ; 16 *and* 17 *Vict., c.* 34, *s.* 2, *sch. D.*

A firm carried on business by purchasing goods in England, taking them to America, and there selling them. They also bought goods in France and Germany, which they exported and sold in the same way. All the partners, except one, who resided in England, resided at New York. The firm had a warehouse and counting-house, and employed clerks and servants in England for the purchase of the goods. The goods were paid for by money sent from New York through the agency of a bank in England, with whom the firm kept an account.

Held, reversing the judgment of the Court of Exchequer, that the partners who resided in the United States were not liable to be assessed upon that portion of the profits of the business which was derived from the sale of the goods exported from England.

Information for duties imposed by the income tax. The material circumstances are as follows:—

The defendant was a partner in the firm of Lattimer, Large, & Co. He resided near Nottingham; the other partners resided at New York, in the United States of America. The firm had a place of business there, and also a place of business at Nottingham, namely, a counting-house and warehouse. The name of the firm was over the door, and they had clerks and servants to carry on the business, and had a banking account with the Nottingham and Notts Banking Company. Books were kept at Nottingham, but they merely showed the purchases in England, the warehouse expenses, and the remittances from New York. No money was ever received in England except from New York. The business of the firm in England was carried on by the defendant, and others, purchasing and shipping goods for exportation; all the goods were shipped, and none were manufactured or resold in England. No profits were made in England; the profits arose from the increased prices obtained on the resale of the goods in America. A large part of the profits of the firm was obtained by the resale of

goods in America, purchased there, and in France and Germany. Remittances were, from time to time, made from New York, and were paid to the Nottingham and Notts Banking Company. The payments for the goods, and the expenses of the establishment incurred in England were paid by checks, drawn by the defendant in the copartnership name.

The court below held: 1st, that the firm was liable to pay income-tax upon the profits realized in America upon the resale of goods purchased in England, and exported from thence; 2d, that the partner resident in England was bound to make a return of such profits on behalf of the firm.

The defendant in the court below appealed.

The case is reported 4 H. and N. 769; 7 W. R, 666.

Mellish, for the appellant. It is conceded on the part of the appellant, that he is bound to pay income-tax on his own share of the profits; but the point that is now urged is, that the partner in England is not obliged to make a return, nor the firm to pay income-tax for profits realized in America on the resale of goods purchased in England. The income-tax is in its nature a tax on *profits*, not on the exportation of goods; and here the profits never existed in England at all. To tax the profits made in America on resale of goods bought in England is in effect to tax the profits of American citizens carrying on business in the United States. In the case of goods manufactured here, it may be that income-tax is paid thereon in respect of the manufacture; but here there is no manufacture,—the profits exist in that place where the books are kept and the profits distributed, not where the goods are merely bought. Among the great shipping companies between this country and the United States, though there may be partners and agents resident, and even profits made, in both countries, the companies are English or American companies according to the place where the profits are distributed and the books kept; and is not this the case of an American company trading with this country, and not an English company at all? The question is, Is this a *bona fide* English or American house? and what is the domicil of the trade? The scope and tenor of the income-tax acts is to make liable either the profits of a trade carried on in England by foreigners, or foreigners residing in England on behalf of incomes de-

rived from abroad; but it would be great injustice to charge foreigners resident abroad, the seat of whose trades is abroad, in respect of their profits not realized here, when income-tax might, as, indeed, it is, in this case, charged by the American government in respect of the very same profits. The scheme of the income-tax is to charge persons resident in respect of their incomes, from whatever source the same are derived; for, being residents, they share in the security and advantages of a residence here, as also to charge the trade of foreigners carried on here, for that is part of the trade of this country, and ought justly to be taxed; but this case falls under neither of these categories. It would be the height of impolicy to charge foreigners in respect of their dealings with this country, which is in effect to discourage the commerce of England. An examination of the acts will show that the party resident here is in no case answerable for more than his share of the profits of a trade not carried on in England; 5 and 6 Vict., c. 35, ss. 1, 2, sched. D. ss. 39, 41, 42, 43, 44, 51, 52, 53, 54, 55; 16 and 17 Vict., c. 34, s. 1. The cases of bankrupts trading in this country are not decisive; for trading and the realization of profits are not identical; *Allen* v. *Cannon*, 4 B. and A. 418; *ex parte Smith*, 1 Cow. 402; *Alexander* v. *Vaughan*, ib. 398, were referred to.

Sir F. Kelly, contra. The suggestion of hardship cannot alter the clear intention of the act. The question here relates to two subject matters: the persons to be charged, and the trades in respect of which the charges are made; and the whole argument turns upon 16 and 17 Vict., c. 34, s. 2, sched. D, in connection with 5 and 6 Vict., c. 35, ss. 100, 106; and from these it is clear that a firm, resident abroad, is bound to pay income-tax on the profits of a trade carried on in the United Kingdom. Here the business is carried on in England. Sec. 106 is decisive of the question; for it makes the partner or agent of a foreign firm, resident in this country, chargeable in respect to the profits of a trade carried on "wholly or in part only in this country;" and the fallacy of the other side is to suppose that a trade is carried on only in that place where the money is taken. It is of no moment when or where the profit is taken; and a trade is carried on "partly in this country" whenever a material operation of trade is effected in England. The cases in bankruptcy above referred to show that the

act of buying goods in this country is a trading within the bankrupt laws; and here a similar act is carrying on trade partly in the United Kingdom within the meaning of the income-tax acts.

Mellish, in reply, was not called on.

COCKBURN, C. J.—Having heard with attention the reason and arguments adduced by the Crown in favor of the decision of the court below, we entertain no doubt that the judgment of that court must be reversed in favor of the plaintiff in error. The facts are simply these. A firm is established in New York for the purpose of buying goods in this and other countries and selling them in America, and on the sale in New York all their profits accrue. The principal seat of the firm being at New York, they have branch houses for the purchase of goods in this country, and for sending the goods over to America. The appellant, the defendant below, is sought to be made liable, not only as an individual resident in this country in respect of his share of the profits of the firm, but in respect also of the profits which accrue to the firm generally on account of the goods purchased here. The firm consists, in fact, of American citizens not resident in this country, and we think they can only be made liable to pay income-tax in case there accrue to them profits derived from a trade exercised by them in England. Thus the question is narrowed to this. Does the firm, under the circumstances disclosed in this case, carry on trade in this country or not? And we think that it does not, and that the firm is not liable within the words of the acts. It is true that whenever a merchant establishes himself in trade for the purpose of buying and selling, it may be that the details of his trade extend over various places, the place of sale or the place where goods are bought is not material, but we must look to the one place where he trades, and where the profits come home to him. In some particular cases he may be said to trade in England, but here the real meaning of the act is, in our judgment, as above stated. Serious and unjust consequences would ensue from an opposite construction, which would render a firm liable to pay income-tax in each of those countries in which there occur acts of buying, selling, or bartering. The argument for the Crown goes the length of saying that the employment of an agent in this country would render the firm liable if the agent buys goods for the

merchant in this country, and we should thus be taxing a country which comes as a purchaser to this country. In case of a trade really exercised here it is only just, equitable, and proper that a foreigner should be chargeable, and the profits of the trade are made amenable to this fiscal law by obliging the agent or person carrying on the business to make a return of such profits; but here there is no one who is in receipt of the profits in England. Such profits arise and are realized in America, and goods bought here to sell in America do not constitute such a trading as is liable to be taxed within the meaning of the income-tax acts. The reason and policy of the law, the individual sections of the act, and their general machinery, admit of but one construction. The liability to pay arises in respect to the profits of the trade in that country where the main business is established, and where the eventual profits accrue and are realized, and which form a portion of the income of that country, at the same time that the partner resident here is liable to pay income-tax in respect of his individual share of the partnership profits, such being, in consideration of his residence here, a part of the income of this country.

WILLES, J.—I concur, for the reasons given by Cockburn, C. J.; but I may say, that until I had heard the able and lucid arguments of Mr. Mellish, I was inclined to agree with the judgment of the court below.

CROMPTON and BLACKBURN, J. J., and BYLES, B., concurred.

Judgment reversed.

F. H. COLLINS, *by* H. COLLINS, *his next friend, v.* BROOK.

Prochein amy — *Infant* — *Attorney* — *Action for money had and received.*

An attorney who, as attorney for the plaintiff in an action by an infant suing by *prochein amy*, has received the damages and costs recovered from the defendant in such action, is liable to the infant, in an action for money had and received.

Judgment of Exchequer affirmed.

Appeal from the Exchequer against a judgment discharging a rule to enter a verdict for the defendant; reported 4 H. & N. 270.

Declaration for money had and received to the use of the infant plaintiff. Plea 1, never indebted; 2, set-off for work

and labor done by defendant, for the plaintiff. Replication to the first plea; issue thereon. To the 2d plea, 1st, *nil debet*; 2d, infancy of the plaintiff.

At the trial it appeared that the plaintiff, a child seven years old, having been bitten by a dog belonging to one Lefever, H. Collins, his father, consulted the defendant, an attorney, as to bringing an action for the injury. The defendant told him that, if successful, the child would get from £30 to £40. The father then asked what would be the expense if he lost. The defendant said, "£50, or say £80, to be safe; if you succeed, you will have nothing to pay." He also said that the child would get the damages. On a subsequent occasion, he made a statement to Mrs. Collins, the wife, in the presence of her husband, that Lefever would have to pay the costs, if the plaintiff won. The writ in that action was sued out by the infant in person; after which, upon the petition of the infant Henry Collins, the father was appointed to prosecute the action for the plaintiff, as his next friend, during his minority, in the usual way. The cause was tried, and a verdict found for the plaintiff, with £30 damages; and the now defendant, as the attorney in that cause, received from the defendant, for damages and costs, £185 7s. 6d., for which he gave a receipt, signing himself plaintiff's attorney. In the present action, the plaintiff claimed the £30, and £1 10s. expenses, allowed to the plaintiff in the former action, and received by the defendant. The defendant's counsel objected that the action should have been brought by Henry Collins, and not by the infant; and he called the defendant, who swore that he had made no special bargain at all, as to the cost in the action of *Collins* v. *Lefever*, and that the father had supplied him with £20, to pay counsel's fees; the defendant further proved, that in consequence of the cause having been made a *remanet*, the plaintiff's costs were unavoidably larger than had been anticipated, and that the Master, on taxation of costs, as between party and party, had disallowed £49 as not chargeable against the defendant, Lefever, but that on a subsequent taxation of costs, as between himself and the *prochein amy*, the costs were taxed at £194 12s. 8d., which sum together with £11 7s. 6d., the costs of taxation, he sought to set off against the plaintiff's demand in this action.

Upon these facts the learned judge told the jury that it

was for the plaintiff to show a bargain to deprive the defendant of his right to extra costs. He asked them whether they thought that the defendant's statement that if the plaintiff got a verdict. the expenses would fall on the other side, and the child would get the damages, was a bargain and positive promise, intending to be binding, let what might happen, or whether it was merely a representation of what the law is, and of his impression that no claim to extra costs would arise. He pointed out that the defendant had sworn that no special bargain was made, and said it was probable that the defendant did not intend to convey that impression; but that if he used words which naturally induced Collins to suppose that he would not be liable, it was enough. He also asked for whom did the defendant receive the money. The jury found that the defendant did convey to Collins the idea that he was not to be liable for extra costs, and that he received the money for the use of the infant. The verdict was entered for the plaintiff, leave being reserved to the defendant to move to enter a verdict for him. The rule having been moved accordingly, was discharged. 4 H. & N. 270.

Norman, for the defendant, argued that the verdict ought to be entered for the defendant, on two grounds; 1st, that there was no privity between an infant, and the attorney employed by his *prochein amy;* 2dly, that the defendant had been employed and retained by the infant's father, and that there was no evidence of money having been received to the use of the infant. The character of *prochein amy* is that of an attorney acting on behalf of the infant, and as such, an officer of the court, and so considered: 2 Inst. 261; n. 8; Westminster, 1 c. 48. See also Westm. 2 c. 15; Merton, c. 10; Westm. 1 c. 33; 2 Inst. 225; *Morgan* v. *Thorne*, 7 M. & W. 400; and as such, and as no party to the suit, he was an admissible witness; *Sinclair* v. *Sinclair*, 13 M. & W. 640; and by the form of the record, it appears that *prochein amy* appoints the attorney to the suit, who is, therefore, his attorney, and not attorney to the infant. The position of *prochein amy* and attorney, is analogous to that of country attorney and town agent, between whom there is privity. *Marnell* v. *Pickmore*, 2 Esp. 473; *Hawkes* v. *Cottrell*, 27, L. J. Ex. 369; *Toler's case*, 1 Salk. 176. *Prochein amy* is *dominus litis*, and his authority over the case is absolute; and the infant cannot control it, or receive the pro-

ceeds. Again, a sub-agent is not bound to account, except to his immediate agent. *Robbins* v. *Fennell*, 11 Q. B. 248; and the attorney in the action is not sub-agent to *prochein amy*. [WILLIAMS, J.— In *Chandler* v. *Vilett*, 2 Saund. 117, the judgment is given for the infant suing by guardian for damages and costs. Is not that the usual way of entering up this judgment?] *Evans* v. *Davis*, 1 C. & J. 460; *Gardiner* v. *Holt*, 2 Str. 1217; *Grave* v. *Grave*, Cro. Eliz. 33. *Ex parte Jones*, 2 D. & L. 161; *Gray* v. *Kirby*, ibid. 601; *Russell* v. *Sharp*, Jac. & Walk. 482; Daniell's Ch. Prac. 76, 80, 82, were referred to.

Barnard, contra, was not called on.

WILLIAMS, J.— We are all of opinion that the judgment of the Exchequer is right. It is clear that the money is the money of the infant. The question is, whether the evidence comes in the way to prevent his recovering it from the defendant. The first objection made in the learned argument of Mr. Norman was, that there was no privity between the infant suing by his *prochein amy*, and the defendant his attorney; and therefore, that money had and received, will not lie. If A remit money to B, to pay C, C cannot sue B for the money had and received, as without B's assent to hold the money for C, there is no privity between B and C; but in the present case it is clear that the judgment in the action must be, in form, in the name of the infant. In the case in Saunders, the judgment is for the infant to recover the damages and costs. That judgment has been long subjected to acute eyes, and has not been impeached. That judgment could be enforced by *fieri facias*. The first objection, therefore, is not maintainable. The second objection was that as the *prochein amy* might incur expenses in the suit, it would be inconvenient if he had not the means of reimbursing himself, by receiving the proceeds. The answer to that is, that if not prepared to undergo the liabilities attendant upon the office, he ought not to undertake it.

CROMPTON, J., was also of opinion that the judgment should be affirmed. The attorney, when appointed, was attorney for both the infant and the *prochein amy*. The action sometimes lies where there is no privity between the parties, as where money comes into the hands of a person tortiously. In that case, the person entitled may waive the tort, and sue for money had and received. The infant, in this case, was entitled to look to the attorney. A *prochein amy* is not sup-

posed to be a man of law, or to take the management of the case; and it would be monstrous to say that he, and not the attorney, is the party liable to the infant. The law cannot be carried further than to restrain an action against a servant; as in *Stephens* v. *Badcock*, 3 B. & Ad. 354; where money is delivered to the servant to hand over to the principal. *Williams* v. *Everett*, 14 East. 582; and *Cobn* v. *Becke*, 6 Q. B. 930, do not apply.

Willes, J., concurred.

Byles, J., concurred. The ordinary rule is, that the action for money had and received, is an equitable action; and *Stephens* v. *Badcock* is an exceptional case. The only difficulty is, that the *prochein amy* may have incurred expenses which it would be convenient he should be reimbursed; but that inconvenience is not a serious one.

Blackburn, J., concurred.

MISCELLANEOUS INTELLIGENCE.

The Jolliffe Case. — We take from the Cincinnati Daily Gazette, of June 27, 1860, the following statement of the facts of this important case, and the opinion of the distinguished Chief Justice of South Carolina.

"On the 21st of May, 1855, a South Carolina planter arived at Cincinnati, in a steamboat, having with him seven negroes — a woman and six children. This man, whose name was Elijah Willis, had treated the negro woman as his wife, and he acknowledged all the children as his own. His object in going to Ohio was to emancipate these negroes. Previous to leaving South Carolina he made a will, leaving his property, valued at about $60,000, to the woman and her children. Immediately upon stepping upon the wharf at Cincinnati, he fell dead. The will was soon thereafter discovered, and Mr. Jolliffe, of Cincinnati, proceeded to South Carolina, to secure the property for the woman and her children. His presence there caused much excitement. The heirs of Willis at once commenced proceedings to have the will set aside, and they were successful in the lower court. The case was carried to the Court of Appeals, and on the 21st of May, 1860, that tribunal reversed the decision of the lower court, thus sustaining the will, and securing the property to the legatees. The woman, we believe, is now residing at New Richmond, Ohio. We give in full the decree of the Court of Appeals in this important case, signed by a majority of the judges of the court.

The Heirs of Elijah Willis *v.* John Jolliffe, Executor of Willis, et al.

Court of Appeals, Columbia, May Term, 1860.

Opinion.

O'Neall, C. J.—The elaborate decree of my brother Wardlaw (while a chancellor) is in many of its parts entitled to the commendation of every

well-informed mind. Yet there are parts which have not met with the concurrence of this court. One, a very material part, on which the whole case depends, has not been satisfactory to a majority. Indeed, on it we have come to a conclusion entirely antagonistic to the decree.

In the first place, I turn to the act of 1820, referred to, and considered in *Frazier* v. *Frazier*, 2 Hill's Chan. Rep. 311. By that act the evil was stated, "the great and rapid increase of free negroes and mulattoes in this State, by migration and *emancipation*," the remedy provided was, "that no slave shall hereafter be emancipated but by act of legislature."

It was argued that the statement of the evil was the increase of free negroes and of mulattoes, but the true reading of the act is, the adjective *free* qualifies *mulattoes*, as well as *negroes;* and read in that way we have the evil as the legislature intended to state it, the great and rapid increase of free negroes and free mulattoes in this State.

What is the effect of the enactment, that "no slave shall hereafter be emancipated but by act of the legislature?" In *Frazier* v. *Frazier*, twenty-five years ago, with the concurrence of my distinguished brother and friend, Judge David Johnson, I stated that this Act could not "have effect upon emancipation beyond the limits of the State." It is very true my brother Harper, the other member of the court, did not sign the opinion, but he gave no dissent, and I happen to know that his objection was more to the competency of slaves to have such a decree pronounced in their favor than to the principles of the decree. He recognized the general principles of the decree in *Gordon* v. *Blackman*, 2 Rich. 45, in which he said, "In *Frazier* v. *Frazier* the court decided that it would not interfere to prevent the execution of the trust when there was no law to forbid it." The case of *Frazier* v. *Frazier* was also recognized in *Finley* v. *Hunter*, 2 Strob. 214. The case of *Frazier* v. *Frazier* was the law until the act of 1841. That act provided that a devise for the removal of a slave from the State for emancipation should be void. That introduced a new rule of action, and it is our duty to enforce it when a proper case arises.

If the objects of the testator's bounty, Amy and her children, had remained in the State until the testator's death, there can be no doubt that the devise directing them to be taken by his executors to Ohio, and there to be manumitted, would have been contrary to law, and the other devises in their favor must have failed. But Elijah Willis in his lifetime removed them to Ohio, with the avowed purpose to emancipate them. He died when he and they were on the northern bank of Ohio, in the city of Cincinnati. If that act made Amy and her children free, then it follows that the devises in their favor are good.

The Constitution of Ohio, in the spirit of the ordinance for the government of the territory northwest of the Ohio River, provides, "there shall be no slavery in this State, nor involuntary servitude unless for the punishment of crime." It is vain to say that this is contrary to the Constitution of the United States. Each and every State, as it emerges from a territorial government is free to adopt their own constitution, allowing or rejecting slavery.

This provision cannot reach cases of persons passing through Ohio with slaves, or where a slave accompanies his master or mistress on a temporary sojourn for business or pleasure. For in point of fact, the master, and the slave as his property, are entitled by the comity of the States, and also by the Constitution of the United States, to be protected. Cobb on Negro Slavery, 7th chap., sections 152, 153.

But the case is very different when the master puts his slaves on the

soil of Ohio with the purpose of making them free. It is then true that they become free by his act. The eloquent counsel for the defendant, in his own work on negro slavery, (Cobb on Negro Slavery, chap. 7, § 154, ¶ 1,) states the principle which applies to and governs such a case. "When there is a change of domicil from a slaveholding to a non-slaveholding nation, the *animus remanendi* works of itself and instanter (*simul ac imperii fines intrarunt*) the emancipation of the slave." It is true Mr. Willis did not change his own domicil, although his last act in life was reaching the soil of Ohio. He intended to return, and therefore his own domicil was not changed; but his act and intention both concurred in placing his slaves, who before were mere chattels personal, in a country where they assumed the character of free persons. This was making Ohio their domicil, and *they are there now in the full enjoyment of freedom which cannot be disturbed.* It seems to me, looked at in this plain way, that they are and were free from the moment when by the consent of their master they were placed upon the soil of Ohio to be free. I have no idea that the soil of Ohio *per se* confers freedom. It is the act of the master which has that effect.

In *Guillimette* v. *Harper*, 4 Richardson's Rep. 190, I stated in 1850, the principle which governs this case. "*If the master carries a slave to Great Britain, to set him free*, or while there, in any way assents to his freedom, there can be no objection to the validity of freedom thus acquired. I do not understand that the law of that case, which was the unanimous judgment of the Law Court of Appeals, has ever been questioned. In this case, if the facts be as I now assume them to be, that Elijah Willis carried Amy and her children to Ohio, to set them free, there can be no doubt that the moment they reached that destination they became *ipso facto* free.

To have that effect, it needed no deed. It is true Mr. Jolliffe, the executor, did, on the 25th day of June, 1855, May term of the Court of Hamilton County, execute a deed of manumission. But clearly that was unnecessary. It might have been well enough to place a record of freedom within constant reach of the parties. If it were necessary, I should be disposed to hold that such a deed would have relation back to the moment of arrival. The Law of Ohio, 1841, ch. 76, p. 591–6,* was brought to our view; it requires blacks, or mulattoes, entering into the State, to give security, and to register themselves. This does not affect the question of freedom. It is a mere police regulation, for the internal government of such people.

This great case turns upon the narrow question,— What did Elijah Willis intend and do, in going to Ohio, and carrying with him Amy and her children? His purpose was clear,— he intended to free the negroes. This required, according to the testimony of experts in Ohio, no other act than merely placing the negroes within the territorial limits of Ohio. If he intended to do something more, such as buying land for them, schooling the children, &c. I do not see how that can alter the case, for those acts were not at all essential to the act of freedom. They were very important for the comfort of the negroes. When about setting out from home with the negroes, he said to Reason Woolley he was going to carry them to Ohio, to Cincinnati; he said he wanted to go and carry them, and free them, so they could have the benefit of his property. She, Amy, wanted to come back with him. He said to her that when he

* These laws have been entirely repealed by the act of 1849, which has been placed in my hands since the delivery of this opinion. See acts of a general nature. Forty-seventh General Assembly of Ohio. Vol. 17, p. 18, § 6.

got her out of South Carolina, she should never come back again. To Mrs. Ary Woolley, a few weeks before leaving with the negroes, he stated his object in taking them off, was to carry them where they *would be free*, and provide for them. To John H. Howard, in March or April, 1855, he stated he had determined to take them to Ohio, and free them there. To William Cullum, on the boat Jacob Strader, he said he was going to Ohio to set them (the negroes) free, and school the children. After this array of testimony, there can be no doubt what was his purpose. Indeed, from what is proved by other witnesses, he had long had the purpose in his mind, in some way to accomplish their freedom. He reached the wharf at Cincinnati, disembarked himself and negroes, and when about taking a hack to the hotel, with them in comp ny, he fell and expired. Upon his person was found a duplicate of his will. I think these facts show that the intent and the act concurred. He intended to confer freedom on the slaves; he had travelled hundreds of miles to consummate that intention, and had reached a point where they could be free. What more was to be done? It seems nothing further was legally required to give freedom in Ohio. Shall we undertake to do otherwise? Can we reach a hand to Ohio, and draw back those people to servitude? They are in the enjoyment of freedom, and we cannot and ought not to interfere.

To allow them to be free, and to permit the devise in their favor to operate, is, we are told, contrary to the policy of South Carolina. I know no policy except that which her laws declare. To that I shall always (as I have done for thirty-two years,— my judicial life) yield obedience. But I should feel myself degraded, if, like some in Ohio, and other abolition States, I trampled on law and Constitution, in obedience to popular will. There is no law in South Carolina, which, notwithstanding the freedom of Amy and her children, declares that the trusts in their favor are void. As soon as they are acknowledged to be free one moment before the death of Elijah Willis, they are capable to become the *cestui que* trusts under his will.

Indeed, in one case, of which we have a very imperfect report, HARPER, J. and myself held that a slave could take freedom and property by the same devise. *Bowers* v. *Newman*, 2 McMullen, 659.

It is supposed it is necessary to ascertain "what was Elijah Willis's intention, after he reached Ohio, — not before?" We can only judge of that by what had occurred before. We know what he intended, up to the moment when he reached Cincinnati; what did he intend when the boat reached the wharf? He might possibly then have remained on the boat with his slaves, and have returned to South Carolina. But he did not do that; he made the act of freedom absolute by landing within the territorial limits of Ohio. This showed he intended to confer freedom by making Ohio their home. He had told Amy "when he got her out of South Carolina, she should never return." The act made his words good. For he could not, if he had desired it, have again reduced her to slavery.

I have not undertaken to review many of the cases cited in the elaborate decree of the Chancellor, or, in the able argument of the case here. For the case turned upon a very narrow point, in which the lights of authority could only help to the general principle, that if the act done was in consequence of the intention previously expressed, it was enough for the case.

This has been found to be so on a review of the whole law and facts; and the result is that the woman, Amy, and her children, were free at the

death of Elijah Willis, and were capable to become the *cestui que* trusts of the executor.

The chancellor's decree is reversed, and the bill dismissed.

[Signed] JOHN BELTON O'NEALL.

I concur in the result. [Signed] J. JOHNSTON."

NEGOTIABILITY OF BANK CHECKS.—In the cases of *Keene* v. *Beard*, and *Eyre* v. *Waller*, *ante* pp. 174 & 175, the latest law of checks in England may be considered to be fully declared and settled; and no commentary is required on the general principle that the negotiability of checks and bills of exchange stands on the same footing. But the question what is such an indorsement as will pass a right of action on a bill or check, is one of such importance, and one which, alluded to as an essential consideration in *Keene* v. *Beard*, has been so much before the courts lately, that an analysis of some of the cases may be of practical value. The general principle is that which was stated by Erle, C. J. and by Byles, J. in *Keene* v. *Beard* that a mere writing of a person's name on the back of a bill or check will not render that person liable as an indorser unless he wrote with an indorsing mind—*animo endorsandi*—intending at the time of writing to incur the liability of an indorser. This was the rule laid down by Lord Campbell, C. J., in *Lloyd* v. *Howard*, 15 Q. B. 995, where his lordship said, "An indorsement requires that there should be a delivery of the bill with an intent to make the person, to whom it is indorsed, owner of the bill, a party to the bill, and transferee of the property in it: (cf. *Martin* v. *Allen*, 8 M. & W. 494; *Bell* v. *Lord Ingestre*, 12 Q. B. 317.) Thus, in the late case of *Law* v. *Farnell*, 1 L. T. Rep. N. S. 32, the question was, whether there had been a sufficient indorsement of a bill to the plaintiff who had received it, indorsed in blank by the defendant to a banking company, of which the plaintiff was a manager, with authority to sue on behalf of the bank. It was held that the indorsement was in blank with the intention of the defendant to pass the property in the bill to the banking company; and that, as the bank had authority to make, and had made, the plaintiff the holder of the bill, he was entitled to sue without any special indorsement to him. The same doctrine on this particular, as well as on the general point, seems to have been assumed in the Irish courts in the late case of *M'Donnell* v. *Murray*, 1 L. T. Rep. N. S. 498, where a note payable to bearer was held to be within the ordinary definition of a negotiable instrument. The Court said: "There is nothing to prevent a bill from being payable to bearer . . . The words 'or bearer,' entitle each holder to treat themselves as indorsees of the bill. That bill is then negotiable, passes by delivery, and is in no wise different from a promissory note payable to bearer, or on demand."

Notwithstanding the identity of bills, promissory notes and checks, as to their negotiability, it will be remembered that a check still retains many incidents which are peculiar to itself, and which do not extend either to bills or notes. "A check does not require acceptance; in the ordinary course is never accepted; it is not intended for circulation; it is given for immediate payment; it is not entitled to days of grace, and though it is strictly speaking an order upon a debtor by a creditor to pay to a third person the whole or part of a debt, yet . . . it is more like the appropriation of what is treated as ready money in the hands of a banker." (*Ranchum Mullich* v. *Lachmeechund Radakissen*, 9 Moo. P. C. 46.)—*Law Times.*

WAS SHAKSPEARE A LAWYER OR A DOCTOR?—Lord Campbell has written a very interesting and curious book to show the extent of

Shakspeare's legal acquirements. A Doctor Bucknill, of London, now presents the world with a work not less learned and entertaining, (The Medical Knowledge of Shakspeare, by John Charles Bucknill, M. D., London: Longman & Co. 1860,) to prove that the immortal dramatist was a good doctor. The Solicitor's Journal says: "If a jury were compelled to decide upon the issue raised between Lord Campbell and Dr. Bucknill, we have no doubt they would be sorely puzzled in arriving at a verdict. They would hear, however, very good speeches on both sides, and be surprised to find how much each had to say. The Lord Chancellor's brochure has received extensive circulation among members of the legal profession. Upon the principle of hearing the other side, they ought to listen to what Dr. Bucknill has to say. Lovers of Shakspeare will read his book, with interest all the greater on account of what the Lord Chancellor has done in the same field.

The Brougham Peerage.—It has been heretofore a matter of regret that the Brougham peerage would necessarily become extinct upon the death of its distinguished possessor, it being limited to the heirs of his body, and Lord Brougham having no such heirs. But within a short time Her Majesty has been pleased to permit it to descend to Mr. William Brougham and his heirs-male. There are, we believe, but two other instances where, on account also of eminent services rendered to the country, a similar limitation of title has been conceded,—those of the Nelson and St. Vincent peerages.

A Valuable Witness.—At the Norfolk assizes, lately, a rather ludicrous incident varied the monotony of a will case which occupied the court for two days. One of the witnesses called by Mr. Serjeant Parry on behalf of the plaintiff, was Mr. C. F. Gale, solicitor, of Cheltenham, who on coming into the box, declined to answer any questions until he had received his expenses—viz. 3*l.* 3*s.* per day for loss of time, and travelling charges at 1*s.* per mile. Mr. Gale stated that he had passed six days in Norwich, waiting for the case to come before the court, and he claimed 29*l.* 12*s.*, of which he had received 5*l.* on account before leaving home. The Associate said the witness could only claim 1*l.* 1*s.* per day and his actual travelling charges. Mr. Gale contended that he was entitled to 3*l.* 3*s.* per day when he was away from home. Eventually the court ordered that he should receive 1*l.* 1*s.* per day for eight days, and his travelling expenses, including an allowance of 6*l.* for railway fares, in all about 16*l.* As no arrangement had been made for payment at the moment, Mr. Gale was directed to leave the box, and another witness was called. Shortly afterwards he was again presented for examination, upon which he raised the objection that he was still unpaid. After some little delay, a check for the balance due to the witness was handed to him, and he then consented to be examined. In reply to a question whether he had made any communication to Mr. Hamilton, his town agent, with reference to the will, the validity of which was disputed, he said he believed he had not, and Mr. Hamilton did not recollect anything being said on the subject. Mr. Serjeant Parry then, amid much laughter, observed that he supposed the witness could not afford any information on the matter; to which he replied, "I told them I could not tell them anything about it when they subpœnaed me to Norwich."

NOTICES OF NEW PUBLICATIONS.

A Practical Treatise of the Law of Evidence. By Thomas Starkie, Esq., of the Inner Temple, one of Her Majesty's Counsel. The eighth American, from the fourth London edition. By George Morley Dowdeswell and John George Malcolm, Esqs., of the Inner Temple, Barristers at Law. With notes and references to American cases. By George Sharswood. Together with the notes to former American editions, by Theron Metcalf, Edward D. Ingraham, and Benjamin Gerhard, Esquires. One vol. 8vo. pp. 828. Philadelphia, T. & J. W. Johnson & Co., Law Booksellers, Publishers, and Importers, No. 535 Chestnut Street, 1860.

The editors of the fourth London edition of the first volume of Mr. Starkie's work state, in their advertisement, that they "have used their best endeavors to render that volume which contains the principles of the law of evidence perfect in itself, and available for the purposes not only of the student, but also of the practitioner. They have subdivided it into chapters, so as to make it more easy for perusal and reference. They have introduced into it those heads from the second and third volumes which relate to parol evidence and presumptions, and have relieved it of much matter which more properly belonged to the digest of proofs contained in those volumes. They have also added a copious Index, still retaining the full analysis of the matter contained in the table of contents."

The present American edition is from the fourth London edition, and has all the advantages of the improved arrangements of that edition, not the least of which, to the profession, will be the reducing the treatise of Mr. Starkie to a single volume of convenient size, and including therein what properly belongs to a work on evidence.

The treatise of Mr. Starkie has been known to the American bar for nearly forty years, and the editions have been as favorably received as could be expected for a work not especially adapted to this country. The labors of the distinguished English and American editors have added much to its value. Indeed, the body of notes has become so large as in some parts of the book almost to overwhelm the text. The fact that an eighth edition is called for is sufficient proof of the estimation in which it is held. We hope when another edition is published, that the table of cases will include the American cases, which, so far as we can perceive, are omitted from the table published in this volume.

The Law of Contracts. By Theophilus Parsons, LL.D., Dane Professor of Law in Harvard University, at Cambridge. Fourth edition. Vol. I. pp. 810, Vol. II. pp. 911. Boston. Little, Brown & Co. 1860.

These volumes by Professor Parsons have met with such favor from the beginning,— a favor that has increased with each new edition,—that they need no commendation. The general voice of the profession is, we believe, unanimous in their approval. They are placed upon a par with the works of the former professors of the Law School at Cambridge, and the names of Story, Greenleaf, and Parsons are joined when we speak of the direct contributions which that school has made to the learning of the law.

The success that has attended Professor Parsons's labors as an author, has not come by chance; it has resulted from, or rather it is, the verdict,

which the public render to those who have done them good service; and it is constantly on the increase, because, not satisfied with having heretofore done well, he has recognized and acknowledged the liberal appreciation of the profession by corresponding efforts, in each new edition, to bring the work nearer to his exalted standard of perfection, and to make it more worthy of the great favor shown to it. The third edition contained two new chapters. The present edition has two more chapters, and many new sections, and new paragraphs in almost every chapter; and more than two thousand new cases are cited. There are now in the two volumes more than fifteen thousand cases referred to, and the author informs us that, from the beginning to the end, no case is cited because cited elsewhere, none merely on the authority of an index or digest, or of a marginal or head-note; none without actual investigation of the case in its whole extent, and none without a subsequent and independent verification of the citation. The indexes of both volumes have been enlarged, and put together as one index at the close of the second volume, to facilitate the use of the book. For a similar reason, the cases cited in either or both volumes have been arranged in one list, and prefixed to the first volume. This has obviated objections made to the former arrangement of the volumes. They previously had the appearance of two distinct volumes, treating of different branches of the same subject. Now it is a homogeneous treatise upon one department of the law, separated for convenience, merely, into two volumes. The whole work has been, in fact, rewritten, and it is offered to the profession as substantially a new work. No pains have been spared to insure a full and accurate presentment of the law as it is at this moment in all things which relate to the foundation, the construction, or the execution of contracts, of every kind.

This indicates the vast extent of the subject matters of the treatise,—for the law of contracts includes "nearly all the law which regulates the relations of human life. Out of contracts, express or implied, declared or understood, grow all rights, all duties, all obligations, and all law. Almost the whole procedure of human life implies, or rather is, the continued fulfilment of contracts."

If we seek for the causes of the great popularity of these volumes of Professor Parsons, we think they can be found in the plan and execution of the work. The graces of style,—and few writers are so happy in this respect as he, do much, but they cannot compensate for an imperfect design or a faulty performance. The arrangement of the subjects may not be so purely scientific and logical as might have been devised, yet it is eminently practical; and the professional man, in the abundant and ready aid it gives to his inquiries and examination, can well excuse the absence of the utmost exactness of science and logic. The chief merit of the plan is the happy combination by means of the text and notes of two dissimilar classes of treatises. There are many books, especially English works, which are hardly more than a digest of cases; and with us, in the endeavor to make "cases subordinate to principles," the opposite extreme has been reached. Both extremes are faulty; the former, because without the thread of the legal principle to guide, we are lost in the labyrinth of cases; the latter, because without the illustration and enforcement of the principle by cases, it is not so clearly and strongly grasped or so firmly retained. Professor Parsons avoids these difficulties by excluding from the text all cases, and by stating therein the principles and rules of law compactly, accurately, and logically. But in the notes he gives his authorities. This arrangement gives us these advantages. The notes contain the authorities

to the principle stated in the text; thus there is no difficulty in following through the cases therein by the help which the text gives. Then there is much space gained, and a large freedom for the statement and discussion of unsettled questions. This is a great help to any lawyer; to one who is not the owner of, or has not access to a large library, it is invaluable. The more than fifteen thousand cases referred to in the notes, or stated therein with greater or less fulness, bring home to the purchaser of these volumes the treasures of the library of the Dane Law School, where can be found a collection, probably more complete than any other, of American and English law books.

We have alluded to the arrangement and treatment of the different subject matters of the volume. Notwithstanding they are so numerous, by having them in the same volume, what is common to all need be but once stated; and thus considerable space is left for the full statement of the law upon the points which are not in common. To the practitioner, therefore, for ordinary purposes, these two volumes supply the place of so many distinct treatises upon the several titles embraced therein.

We commend these volumes most heartily to the profession, as well deserving the popularity and success which their great merits have justly earned.

NEW PUBLICATIONS RECEIVED.

REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME JUDICIAL COURT OF MASSACHUSETTS: LUTHER S. CUSHING, Reporter. Vol. XII. 8vo. pp. 660. Boston: Little, Brown & Company. 1860.

SUPPLEMENT TO THE GENERAL STATUTES OF THE COMMONWEALTH OF MASSACHUSETTS. To be continued annually. No. 1: Legislation of 1860. Edited by WILLIAM A. RICHARDSON and GEORGE P. SANGER. pp. 51. Boston: Published by William White, State Printer, 4 Spring Lane. Sold by James Campbell, 62 & 64 Cornhill.

A PRACTICAL TREATISE ON THE LAW OF COVENANTS FOR TITLE. By WILLIAM HENRY RAWLE. 1 vol. Third edition, revised and enlarged. 8vo. pp. 784. Boston: Little, Brown & Company. 1860.

INSOLVENTS IN MASSACHUSETTS.

Name of Insolvent.	Residence.	Commenceme't of Proceedings.	Name of Judge.
		1860.	Returned by
Arcin, Lubin	Pittsfield,	June 5,	James T. Robinson.
Arnold, Smith D.	"	May 14,	"
Beede, Valentine M.	Lynn,	" 7,	Geo. F. Choate.
Brigham, John A. } (1)	Boston,	" 11,	Isaac Ames.
" Martin F. }			
Burbank, Elisha	Woburn,	" 28,	Wm. A. Richardson.
Creech, Sam'l W., sen.	Boston,	" 4,	Isaac Ames.
Daily, Elihu W.	Brighton,	" 8,	Wm. A. Richardson.
Dickey, Benj. F.	Lowell,	" 16,	"
Dudley, James W.	Wayland,	" 28,	"
Eldredge, Erasmus D. (2)	Boston,	" 24,	Isaac Ames.
Gay, Wm. (3)	Holliston,	" 3,	Wm. A. Richardson.
Granville, Oren H.	Somerville,	" 16,	"
Greenleaf, Calvin	Bolton,	" 28,	Henry Chapin.
Haseltine, James R. (4)	Boston,	" 8,	Isaac Ames.
Haynes, Aaron	Chelsea,	" 2,	"
Howe, George W.	Chester,	" 1,	John Wells.
Hutchinson, A. (5)	Groton,	" 23,	Henry Chapin.
Jaquith, Leonard I. (6)	Adams,	" 11,	James T. Robinson.
Krebs, August	Boston,	" 1,	Isaac Ames.
Merrill, John K. } (7)	Lawrence,	" 23,	Geo. F. Choate.
" Sylvester }			
Nye, John A.	Boston,	" 1,	Isaac Ames.
Otis, Benj. B. (5)	Worcester,	" 23,	Henry Chapin.
Pease, Oliver	Lenox,	" 30,	James T. Robinson.
Roberts, Lyman S. (4)	Roxbury,	" 8,	Isaac Ames.
Savage, John	Blackstone,	" 1,	Henry Chapin.
Snell, Lucius }			
" Melville } (8)	Sturbridge,	" 23,	"
" Thomas }			
Stone, Joseph W. (2)	Newton,	" 24,	Isaac Ames.
Tash, James H.	Natick,	" 23,	Wm. A. Richardson.
Thomas, Leavitt H. (6)	Adams,	" 11,	James T. Robinson.
Travis, Randall (3)	Holliston,	" 3,	Wm. A. Richardson.
Tucker, Roswell D.	Boston,	" 9,	Isaac Ames.
Vinal, Spencer J.	Brighton,	" 25,	Wm. A. Richardson.
Wilcox, Charles S.	Ware,	" 17,	Sam'l F. Lyman.
Williams, James	Lynn,	" 18,	Geo. F. Choate.

FIRMS.

(1) M. F. & J. A. Brigham.
(2) Stone & Eldridge.
(3) Travis & Gay.
(4) Roberts & Haseltine.
(5) [Late] A. Hutchinson & Co.
(6) Thomas & Jaquith.
(7) J K. & S. Merrill.